

SHIVA MICHAEL SETHI

700 Constitution Ave NE, Apt 118, Washington, DC 20002 • (646) 352-3810 • sms524@georgetown.edu

EDUCATION

GEORGETOWN UNIVERSITY LAW CENTER

Juris Doctor

GPA: 3.67

Journal: *The Georgetown Law Journal* (Executive Articles Editor)

Clinic: Health Justice Alliance

Activities: Black Law Students Association, South Asian Law Students Association, RISE Fellow, Public Interest Fellow, American Constitution Society.

Washington, DC

Expected May 2024

UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL

Bachelor of Arts in Economics and Global Studies (Double major)

Chapel Hill, NC

May 2017

EXPERIENCE

BREDHOFF & KAISER

Summer Associate

- Write legal memoranda and conduct research on the National Labor Relations and Fair Labor Standards Acts.
- Assist attorneys conducting collective bargaining, fact finding in preparation for litigation, and advising clients.

Washington, DC

May 2023 – Present

HEALTH JUSTICE ALLIANCE

Student Attorney

- Represented two clients in cases related to housing discrimination and family law in a medical-legal partnership.
- Negotiated with opposing parties to achieve clients' goals and counselled clients about their legal claims.

Washington, DC

January 2023 – May 2023

U.S. DEPARTMENT OF LABOR

Legal Extern, Office of the Solicitor, Mine Safety and Health Division

- Drafted motions and sections of briefs to support Mine Act enforcement and promote worker safety.

Washington, DC

September 2022 – December 2022

FEDERAL COMMUNICATIONS COMMISSION

Legal Intern, Office of Commissioner Geoffrey Starks

- Analyzed proposed regulations, enforcement litigation, and prepared the commissioner for stakeholder meetings.

Washington, DC

May 2022 – August 2022

GEORGETOWN LAW WORKERS' RIGHTS INSTITUTE

Research Assistant

- Published *What A Runaway Chipotle Means for Worker's Rights* in the Georgetown Journal on Poverty Law and Policy.
- Presented research at 2022 Labor Research and Action Network conference at Morehouse College.

Washington, DC

January 2022 – Present

CENTER FOR LAW AND SOCIAL POLICY (CLASP)

Legislative Assistant

- Collaborated with Congressional staffers and the Biden transition team to advance CLASP's anti-poverty mission.

Child Care and Early Education Research Assistant

- Presented research at three policy conferences, wrote public comments, six reports, and several blog posts.

Washington, DC

June 2020 – July 2021

August 2017 – June 2020

SELECTED HONORS AND COMMUNITY INVOLVEMENT

- 2023 Major League Baseball Players Association Michael Weiner Scholarship for Labor Studies
- 2022 Federal Communications Bar Association Award
- SNAP Outreach Specialist, DC Hunger Solutions (January-April 2018, 2019)

INTERESTS

- Reading memoirs, watching college basketball, fishing, hiking in national parks

This is not an official transcript. Courses which are in progress may also be included on this transcript.

Record of: Shiva M. Sethi
GUID: 809889550

Course Level: Juris Doctor

Entering Program:

Georgetown University Law Center
Juris Doctor
Major: Law

Subj Crs Sec Title Crd Grd Pts R

----- Fall 2021 -----
LAWJ 001 93 Legal Process and Society 4.00 B+ 13.32

Naomi Mezey
LAWJ 002 93 Bargain, Exchange, and Liability 6.00 A- 22.02

David Super
LAWJ 005 33 Legal Practice: Writing and Analysis 2.00 IP 0.00

EunHee Han
LAWJ 009 36 Legal Justice Seminar 3.00 B+ 9.99
David Luban

EHrs QHrs QPts GPA
Current 13.00 13.00 45.33 3.49
Cumulative 13.00 13.00 45.33 3.49

Subj Crs Sec Title Crd Grd Pts R

----- Spring 2022 -----
LAWJ 003 93 Democracy and Coercion 5.00 B+ 16.65
Louis Seidman

LAWJ 005 33 Legal Practice: Writing and Analysis 4.00 B 12.00

EunHee Han
LAWJ 007 93 Property in Time 4.00 B+ 13.32

Daniel Ernst
LAWJ 008 31 Government Processes 4.00 A+ 17.32

Howard Shelanski
LAWJ 611 13 Questioning Witnesses In and Out of Court 1.00 P 0.00

Michael Williams

EHrs QHrs QPts GPA
Current 18.00 17.00 59.29 3.49
Annual 31.00 30.00 104.62 3.49
Cumulative 31.00 30.00 104.62 3.49

Subj Crs Sec Title Crd Grd Pts R

----- Fall 2022 -----
LAWJ 1491 38 Externship I Seminar (J.D. Externship Program) 3.00 NG 0.00

Manpreet Teji
LAWJ 1491 86 ~Seminar 1.00 A 4.00

Manpreet Teji
LAWJ 1491 87 ~Fieldwork 2cr 2.00 P 0.00

Manpreet Teji
LAWJ 165 05 Evidence 4.00 A- 14.68

Michael Gottesman
LAWJ 215 09 Constitutional Law II: Individual Rights and Liberties 4.00 A- 14.68

Randy Barnett

LAWJ 264 05 Labor Law: Union Organizing, Collective Bargaining, and Unfair Labor Practices 3.00 A 12.00

Brishen Rogers

In Progress:

-----Continued on Next Column-----

EHrs QHrs QPts GPA
Current 14.00 12.00 45.36 3.78
Cumulative 45.00 42.00 149.98 3.57

Subj Crs Sec Title Crd Grd Pts R

----- Spring 2023 -----

LAWJ 263 05 Employment Law 3.00 A+ 12.99
LAWJ 627 4 Development of Lawyering Identity 4.00 A 16.00

LAWJ 627 81 ~Seminar 2.00 A 8.00
LAWJ 627 82 ~Case & Project Handling 4.00 A- 14.68

In Progress:

LAWJ 627 05 Health Justice Alliance Law Clinic In Progress

----- Transcript Totals -----

EHrs QHrs QPts GPA
Current 13.00 13.00 51.67 3.97
Annual 27.00 25.00 97.03 3.88
Cumulative 58.00 55.00 201.65 3.67

----- End of Juris Doctor Record -----

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

June 10, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing in strong support of Shiva Sethi's application for a clerkship in your chambers. Shiva was a student in my "Government Processes" course (essentially a survey of administrative law), a required course in the special "Section 3" curriculum Shiva pursued during his first year at Georgetown Law. That curriculum brings a broader theoretical and policy framework into the first-year curriculum than is traditionally present. Shiva excelled in that class – he received the sole A+ that I gave in the class, a grade that I often do not confer at all. Shiva was simply the best student I have had in Government Processes in the three years I have taught the course and one of the best students I have had in my years on the Georgetown faculty.

The Government Processes class is particularly challenging for first-year students who have not yet studied constitutional law. Shiva nonetheless mastered the material and, among a group of very smart students, distinguished himself with the depth of the questions he asked and the incisiveness of the questions he answered. Shiva's grasp of the complexities of constitutional separation of powers and the nuances of judicial review of agency action were truly impressive. Shiva consistently stood out for his ability to identify the key issues in the cases we studied and intelligently discuss the analytical and doctrinal complexities that these cases usually involved. His clear responses to hard questions I asked during class were of great benefit to his classmates. Shiva was able to synthesize the different strands of administrative law we studied into a coherent framework that made him a leader in our class discussions. I was very grateful to have him in class.

Shiva is a deeply thoughtful, mature, and committed future lawyer. We have had numerous discussions outside of class about the application of administrative law to labor and employment issues, about government regulation, and about the interaction among government agencies, private entities, and the courts. It is fair to say that in discussions with Shiva I feel more like I am talking to a peer or colleague than to a law student. Yet there is not the slightest arrogance or conceit in his manner.

The bottom line is that Shiva would be a terrific addition to the legal team in any environment, and particularly so as a law clerk in a collegial chambers with a demanding docket. I therefore strongly endorse Shiva's application. Any judge will be very fortunate to have him as a law clerk.

Please do not hesitate to contact me if additional discussion would be helpful.

Sincerely,

Howard Shelanski
Professor of Law
Joseph and Madeline Sheehy Chair in Antitrust Law and Trade Regulation
hshelanski@georgetown.edu

Howard Shelanski - hshelanski@law.georgetown.edu

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

June 10, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to recommend Shiva Sethi in the strongest possible terms for a clerkship in your chambers. Shiva sought me out in his first year at Georgetown given his interest in labor and employment law, and since then we have been in regular contact. He also took my Labor Law class in the Fall of 2022. Based on our interactions both inside and outside of class, I feel I have gotten to know him quite well.

Shiva's work in my class was outstanding. He frequently volunteered to discuss cases, and invariably had insightful and original comments on the materials. On several occasions he pushed back on my own interpretation of cases or their reasoning in a way that was quite respectful and insightful. He earned an A, with an exam that was among the best in the class. Needless to say Shiva's writing and legal analysis were extremely strong on the exam. Given his excellent class participation and clear grasp of the materials, I was not at all surprised by the grade.

Through our meetings outside of class it has become clear to me that Shiva has a rare combination of first-rate analytical abilities and a deep commitment to social justice. Given his college achievements, which included a double major in economics and global studies and several prestigious scholarships, Shiva certainly could have pursued many different career options. But he chose to spend four years working on issues of economic and racial justice at the Center for Law and Social Policy. Likewise, this summer he surely could have found a job at a large prestigious corporate law firm, but instead he chose to intern at Bredhoff & Kaiser, one of the nations' leading union-side labor law boutiques.

Shiva has also been active in the Georgetown Law community. This school year he has done outstanding work with the Worker's Rights Institute, researching and publishing on labor law issues and organizing several events that were quite well-attended and informative. He did that while carrying a full course load including a clinic, serving as one of the Article's Editors for the *Georgetown Law Journal*, and staying involved in multiple student groups including the Black Law Students Association. His ability to manage that range of commitments speaks to both his work ethic and his organizational skills. Those various efforts, together with his academic achievements, likely helped him with the Michael Weiner Scholarship for Labor Studies, a prestigious scholarship that provides financial support for students planning careers in labor and employment law.

Finally, I can also say that Shiva is a student of uncommon maturity and poise, with strong interpersonal skills. He is able to connect with other students from a wide range of backgrounds, which suggests he has significant leadership abilities. I believe he has a very bright future ahead of him as a lawyer and advocate, and I will not hesitate to recommend him highly to legal employers in the future.

Please do not hesitate to reach out if I can be of any further assistance.

Sincerely,

Brishen Rogers
Professor of Law

Brishen Rogers - br553@georgetown.edu - 2023346078

May 16, 2023

The Honorable Judge Grey

United States District Court

Dear Judge Grey:

I submit this letter of recommendation on behalf of Shiva Sethi for a judicial clerkship.

I am a visiting professor here at Georgetown Law Center where I teach a course on labor law and the 21st century workforce. I am also the executive director of Georgetown's Workers' Rights Institute (WRI).

Shiva Sethi is currently a rising third year student in pursuit of a Juris Doctorate here at Georgetown Law Center and is has, for the last two years, been one of the research assistants at the Workers' Rights Institute. WRI could not be more delighted. As his employer and mentor, I've had the opportunity to know Shiva's worth as well as the quality of his work. It is on these bases; I enthusiastically recommend him for a judicial clerkship. Prior to becoming faculty at Georgetown Law I had the honor of serving as Board Member and Chairman of the National Labor Relations Board during the Obama administration. In that capacity, I have reviewed and assessed the quality and skills of staff attorneys tasked to research and write the very important decisions of that agency. Mr. Sethi's grasp of the law, his analytical ability and his persuasive argument would have made him well suited for my staff.

I first met Shiva during his first weeks as a first year student. He sought me out because he was interested in the Workers' Rights Institute and wanted to know more about its mission and activities. Having worked for a public advocacy organization like the Center for Law and Social Policy (CLASP), Shiva presented well as one with a keen interest in social justice and worker rights. I took the chance of hiring him as a research assistant in the second semester of his first year, and my decision could not have been wiser. Shiva has proven himself to be a quick study, meticulous researcher, and talented writer. His contribution to the mission of WRI has been invaluable. For example, During his time at WRI, Shiva has co-written an article educating the public on Chipotle's Anti-Union Tactics which was published in the Georgetown Journal on Poverty Law and Policy. For that article Shiva not only researched and analyzed the jurisprudence, but also contributed astute observations regarding the inequities and inadequacies in the laws related to worker protections. Shiva also helped prepare me for my testimony before the House of Representatives Committee on Education and Labor in September of 2022. He has prepared materials on the racial and gender biased origins and consequences of devaluing domestic and childcare labor. In that regard, Shiva, representing WRI, presented at an international conference of the Labor Research and Action Network (LRAN). Working with me, Shiva has researched a variety of worker rights issues including gender equity as well as challenges to local and national organizing. He has turned research into events such as online and in person panel discussions on trending issues affecting today's labor relations landscape. Shiva is eager, analytical and is able to connect his knowledge of history and policy to his work product. He stays in tune with labor trends, and often is the one informing me of the latest development on labor matter outside his area of assignment. He turns over assignments quickly with the thoroughness one would expect from a seasoned legal researcher.

As a former employer of lawyers, I recognize qualities necessary of a good law student, particularly one who has shown Shiva's abilities. Shiva continues to perform well in the rigorous Georgetown academic environment, which includes among other responsibilities, his service as Executive Articles Editor of the Georgetown Law Journal. The rigor of this environment has yet to diminish Shiva's enthusiastic pursuit of knowledge and passion for justice. Rather, he is thriving. I believe that Shiva Sethi should be offered a judicial clerkship without hesitation, as there is no doubt that your court will greatly benefit from his talents. Feel free to contact me with any questions that you might have.

Sincerely,

Mark Gaston Pearce

mark.pearce@georgetown.edu

(cell)716-308-3494

Mark Gaston Pearce - mark.pearce@georgetown.edu

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Writing Sample

The attached writing sample is an early draft of an article which was published in the online version of the Georgetown Journal on Poverty Law and Policy on March 20, 2023. While I published the final version of the Article with a coauthor, I wrote the vast majority of the Article by myself. I wrote the entirety of the attached version without assistance. The final, published version of the article is [available here](#).

Shiva Michael Sethi700 Constitution Ave NE, Apt 118 Washington D.C. 20002 • 646-352-3810 • sms524@georgetown.edu**What a Runaway Chipotle Means for Workers Rights**

By Shiva Sethi and Mark Gaston Pearce

I. Closing a Chipotle in Augusta, Maine

Last July, Chipotle abruptly announced that it was closing a store in Augusta, Maine. The Augusta Chipotle was special – it was the first store in the chain to attempt to unionize. Chipotle’s closure of the Augusta store fits into a pattern of how large businesses use partial closures to stifle organizing drives. This saga demonstrates the inadequacy of modern procedures and remedies.

Chipotle is a ubiquitous restaurant chain with nearly 3,000 locations and \$7.55 billion in annual sales. It employs nearly 100,000 workers whose starting pay ranges between \$11-18 dollars per hour.¹ Chipotle closed ten U.S. stores in the first half of 2021 and one store in the nine months before March 31, 2022.²

Before deciding to organize, the Augusta workers walked off the job. They protested unsafe working conditions including understaffing, excessive hours, orders to falsify work records, and more.³ In response, the company closed the store for safety training. Later that month, most workers at the store signed union cards and they informed management of their intent to unionize, officially beginning the union election process.⁴

¹ Macro Trends, *Chipotle Mexican Grill*, <https://www.macrotrends.net/stocks/charts/CMG/chipotle-mexican-grill/number-of-employees> (last visited January 1, 2023); Chipotle Mexican Grill, *Chipotle Increases Wages Resulting in \$15 Per Hour Average Wage and Provides Path of Six Figure Compensation in ~3 Years* (May 10, 2021) <https://newsroom.chipotle.com/2021-05-10-Chipotle-Increases-Wages-Resulting-In-15-Per-Hour-Average-Wage-And-Provides-Path-To-Six-Figure-Compensation-In-~3-Years>.

² Sarah Todd, *Are Starbucks and Chipotle Union Busting by Closing Stores?*, QUARTZ, (July 27, 2022), <https://qz.com/2191767/are-starbucks-and-chipotle-union-busting-by-closing-stores/>.

³ Keith Edwards, *Augusta Chipotle Restaurant Workers May be First in Nation to Unionize Following Health, Labor Concerns*, CENTRALMAINE.COM (June 22, 2022); <https://www.centralmaine.com/2022/06/22/augusta-chipotle-workers-decide-to-unionize/>; Keith Edwards, *Augusta Chipotle Workers Walkout, Claim Unsafe Conditions Due to Understaffing*, CENTRALMAINE.COM (June 17, 2022) <https://www.centralmaine.com/2022/06/16/augusta-chipotle-workers-walk-out-claim-unsafe-conditions-due-to-understaffing/>.

⁴ *Id.*

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Chipotle closed the Augusta store hours before the store's workers were scheduled to have a National Labor Relations Board (NLRB) hearing about their election. Chipotle did not offer to transfer Augusta workers to other Chipotles, but it gave them severance and offered to help them find work elsewhere.⁵ The company's explained that it was closing the store because of excessive staff absences.⁶

In August, the Augusta workers discovered that Chipotle was hiring workers for another location 45 minutes away in Auburn, Maine.⁷ When the Augusta workers tried to apply to the Auburn store, they found that the company had locked them out from using the email addresses that the company had on file.⁸ One of the leaders of the Augusta organizing drive, Brandi McNease, filled out an application using a different email address. The Auburn store scheduled an interview with her the next day.

Before McNease interviewed, the Auburn manager called her. She told McNease that the regional manager, Jarolin Maldonado, had told her not to interview McNease because she had attendance problems in the past.⁹ McNease had never been disciplined for attendance issues. The store manager also said that she didn't know "you were part of that group."¹⁰ McNease said that

⁵ Andy O'Brien, *Chipotle Blacklists Maine Workers Who Tried to Unionize, Union Filed NLRB Complaint*, MAINE AFL-CIO, (Aug. 11, 2022), <https://maineafcio.org/news/chipotle-blacklists-maine-workers-who-tried-unionize-union-files-nlr-complaint>.

⁶ Dee-Ann Durbin, *Chipotle closes store in Maine, thwarting union efforts*, ASSOCIATED PRESS, (July 19, 2022), <https://apnews.com/article/maine-augusta-national-labor-relations-board-cfcb6a5da7be0cbac088bb2b9549436e>.

⁷ O'Brien, supra note 5; As of October 2022, this hiring advertisement was still posted online. Restaurant Team Member – Crew (3286 – Auburn Center Street) (2022) Retrieved from https://www.google.com/search?q=chipotle+Auburn,+ME+jobs&client=safari&rls=en&ei=9UTxYoKIA6qIptQP8aKIA&uact=5&oq=chipotle+Auburn+jobs&gs_lcp=Cgdn3Mtd2l6EAM6BwgAEEcQsAM6CggAEEcQsAMQyQM6BQgAEIAEOgIABCABBDJA0oECEYAEoECEYAYFC8BljIIGC7ImgBcAF4AIABYIgB2geSAQIxMpgBAKABAcgBCMABAO&sclient=gws-wiz&ibp=htl:jobs&sa=X&ved=2ahUKewi2ksys4rf5AhWMD1kFHdo2An8Qkd0GegQIBBAB#fpstate=tldetail&link_id=7&can_id=7f8dc5647b05e8c908960e833bcbea2e&source=email-ironwood-workers-unionize-blacklisted-workers-more&email_referrer=email_1629062&email_subject=good-news-for-municipal-workers-restaurant-organizing-more&htivrt=jobs&htidocid=cFh0rTBqFXwAAAAAAAAAAAA%3D%3D.

⁸ O'Brien, supra note 5.

⁹ *Id.*

¹⁰ Meaghan Bellavance, *Chipotle reportedly blacklists Augusta employees who filed to unionize*, NEWS CENTER MAINE (November 3, 2022 11:24 PM) <https://www.newscentermaine.com/article/money/business/chipotle->

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the same regional director had told her that she was eligible to be rehired when Chipotle closed the Augusta store. This suggests that contrary to Chipotle's stated reasons for closing the Augusta store, it was motivated by illegal anti-union animus, to remove and exclude pro-union employees.

II. Legal Context for Closures in Response to Organizing

U.S. labor law grants employers the absolute right to *completely* shut down explicitly because of union opposition. However, employers who operate multiple locations cannot partially close one location to discourage workers from unionizing in other locations. Courts frequently struggle to distinguish between lawful and unlawful motives in partial closure cases. The tension between employees' labor rights and employers' nebulous economic rights, echoes throughout labor law. When *Jones & Laughlin* affirmed the constitutionality of the NLRA, the Court held the Act was constitutional partly was because it imposed limited restrictions on employer power.¹¹ Since that case, courts have struggled to define where employee rights end and where employer rights begin.

The canonical partial closure case is *Darlington Manufacturing*.¹² Darlington was one of several textile mills owned by the Milliken family.¹³ In March 1956, a union began organizing workers at the Darlington mill in South Carolina.¹⁴ During the organizing drive, the employer

[blacklists-augusta-maine-employees-who-filed-for-union-food-business/97-ed587a53-0828-425a-8922-7585a579b341](https://www.blacklists-augusta-maine-employees-who-filed-for-union-food-business/97-ed587a53-0828-425a-8922-7585a579b341).

¹¹ NLRB. v. Jones & Laughlin Steel Corp., 301 U.S. 1, 45–6 (1937).

¹² Textile Workers Union of America v. Darlington Mfg. Co., 380 U.S. 263, 265–275 (1965).

¹³ *Id.* at 275.

¹⁴ *Id.* at 265–66.

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threatened to close the mill if the union won.¹⁵ In September, the union won and six days later, the company's board voted to liquidate the mill. Over 500 workers lost their jobs and the plant closed in November.¹⁶ The NLRB concluded that the mill was closed because of the company's anti-union animus in violation of Section 8(a)(3) of the National Labor Relations Act.¹⁷ The Supreme Court unanimously affirmed the Board.

The Court distinguished between closing a business entirely and shutting down part of a business for an anti-union purpose.¹⁸ The Court wrote, "a partial closing is an unfair labor practice... [violating the NLRA] if motivated by a purpose to chill unionism in any of the remaining plants of the single employer and if the employer may reasonable have foreseen that such closing would likely have that effect."¹⁹ The court instructed the NLRB to make findings about the purpose and effect of closing the mill on the employers' employees at other locations. On remand, the NLRB ruled for the union.²⁰

Subsequent cases have clarified *Darlington*'s rule. Employers who partially close or divert work because of any reason *besides* anti-union animus such as technological change or economic reasons do not violate the law. The Eleventh Circuit held that a manufacturer that shut down one of its plants two weeks after a union won an election there did not violate the NLRA because the closure was for economic reasons including declining demand for the employer's product.²¹ Two weeks after meat cutters in a Texas Walmart voted to unionize, Walmart announced it was

¹⁵ *Id.* at 266.

¹⁶ *Id.*

¹⁷ This section is now 29 U.S.C.A. § 158(a)(3).

¹⁸ *Id.* at 272.

¹⁹ *Id.* at 275.

²⁰ *Darlington Mfg. Co. v. NLRB*, 397 F.2d 760 (4th Cir. 1968).

²¹ *Weather Tamer, Inc. v. N.L.R.B.*, 676 F.2d 483, 493 (11th Cir. 1982)

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ending ‘meat cutting operations’ and transitioning to selling pre-packaged meat.²² The D.C.

Circuit held this partial closure was not illegal since was motivated by technological change.²³

Employers are more likely to be found liable in *Darlington* cases when they do not have a pre-existing plan to partially close and the circumstances provide sufficient evidence of anti-union motive. In *Purolater Armored*, the employer explained its partial closure by blaming the store’s lack of profitability. The Eleventh Circuit held the closure was illegal because it was announced a week after the union won its election, the employer had demonstrated anti-union animus during the campaign, and the store had long been unprofitable.²⁴ Similarly, in *in re Chariot*, the Board held an employer illegally partially closed because there was no pre-existing closure plan before the union activity, the employer’s campaign threats demonstrated anti-union animus, and they treated organizing employees differently from other employees.²⁵ In 2009, Boeing relocated business from a unionized plant in Washington to a non-unionized plant in South Carolina, affecting approximately 1,000 jobs.²⁶ A Boeing executive blamed the transfer on “strikes happening every three to four years in Puget Sound [the unionized plant]”.²⁷ The NLRB alleged that Boeing had illegally diverted the work due to anti-union animus, and sought to reverse the transfer.²⁸ Boeing and the union settled.²⁹ The line between legal and illegal

²² Frank Swoboda, *Wal-Mart Ends Meat Cutting Jobs*, WASH. POST, (March 4, 2000), <https://www.washingtonpost.com/archive/business/2000/03/04/wal-mart-ends-meat-cutting-jobs/acdb8f7c-d7c2-4e31-aad7-8f690ba3b35b/>.

²³ *United Food and Com. Workers, AFL-CIO v. N.L.R.B.*, 519 F.3d 490, 493–97 (D.C. Cir. 2008). The Court also held that Walmart had violated its duty to bargain.

²⁴ *Purolator Armored, Inc. v. N.L.R.B.*, 764 F.2d 1423, 1427–1431 (11th Cir. 1985).

²⁵ *In re Chariot Marine Fabricators & Indus. Corp.*, 335 NLRB 339, 352–54 (2001).

²⁶ Steven Greenhouse, *Labor Board Tells Boeing New Factory Breaks Law*, N.Y. TIMES (April 20, 2011), <https://www.nytimes.com/2011/04/21/business/21boeing.html>.

²⁷ Joshua Freed, *Boeing Accused Of Retaliating Against Union After Strike*, INDUSTRIAL DISTRIBUTION, (April 21, 2011), <https://www.inddist.com/home/news/13765748/boeing-accused-of-retaliating-against-union-after-strike>.

²⁸ National Labor Relations Board, *Boeing Documents*, <https://www.nlr.gov/news-publications/publications/fact-sheets/fact-sheet-archives/boeing-complaint-fact-sheet/boeing> (last visited Jan. 1 2023).

²⁹ Senator Graham threatened the NLRB with “very, very nasty” consequences if the NLRB filed the complaint. The NLRB filed it anyway. Kevin Bogardus, *Senator threatened labor board before Boeing complaint*, THE HILL, (Nov.

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motivations for a partial closure is blurry, partly because one of the major reasons employers oppose unions is because they often increase labor costs, a paradigmatic ‘economic reason’.

Chipotle is not the only employer that has been recently accused of *Darlington*-like tactics. Workers allege that Trader Joe’s closed a store in response to an organizing effort there in August 2022.³⁰ The same month, Starbucks closed two unionized stores. The union, Starbucks Workers United (SWU), accused management of closing the stores as retaliation for organizing, alleging that 42 percent of recently closed stores had union activity.³¹ Starbucks blamed the closure of profitable stores on safety.³² Starbucks’ CEO, stated “there are going to be many more”.³³ Ironically, the safety concerns that prompted some workers to organize are being used to justify store closures.

III. Next Steps for the Augusta Workers

The Augusta workers have a strong *Darlington* claim but they may not receive all the remedies they seek even if a court finds Chipotle broke the law. The workers filed an unfair labor

9 2011, 10:17 PM), <https://thehill.com/business-a-lobbying/178240-senator-threatened-labor-board-before-boeing-complaint/>; Steven Greenhouse, *Labor Board Drops Case Against Boeing After Union Reaches Accord*, N.Y. TIMES, (Dec. 9 2011), <https://www.nytimes.com/2011/12/10/business/labor-board-drops-case-against-boeing.html>.

³⁰ Dave Jamieson, *Trader Joe’s Workers Decided to Unionize. The Company Abruptly Closed Their Store.*, HUFFINGTON POST, (August 17 2022, 8:42 PM), https://www.huffpost.com/entry/trader-joes-wine-shop-closed-union_n_62fd72cce4b071ea958c5b35.

³¹ Hilary Russ, *Starbucks union claims company closed two cafes in retaliation*, REUTERS, (August 23, 2022, 3:47 PM), <https://www.reuters.com/business/retail-consumer/starbucks-workers-union-claims-retaliation-closing-two-cafes-2022-08-23/>; Elijah de Castro, *Cornell’s Starbucks workers strike after grease trap failure*, THE ITHACAN, (April 20, 2022), <https://theithacan.org/news/cornells-starbucks-workers-strike-after-grease-trap-failure/>; Joanna Fantozzi, *Starbucks permanently shuts down unionized store as labor tensions continue to grow*, NATION’S RESTAURANT NEWS (June 13 2022), <https://www.nrn.com/quick-service/starbucks-permanently-shuts-down-unionized-store-labor-tensions-continue-grow>.

³² *Id.*

³³ Allison Nicole Smith, *Starbucks CEO Howard Schultz says more stores to close for security reasons*, THE SEATTLE TIMES (July 19, 2022, 3:28 PM), <https://www.seattletimes.com/business/starbucks/starbucks-ceo-howard-schultz-says-more-stores-to-close-for-security-reasons/>.

Shiva Michael Sethi

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practice charge with the NLRB and in November 2022, the NLRB issued a sweeping complaint seeking several remedies including reopening the Augusta store, reinstating employees with backpay, and forcing Chipotle to recognize and bargain with the union.³⁴ The Board may also seek injunctive relief which would temporarily reinstate the workers while their cases are pending.³⁵ The case will be heard by an Administrative Law Judge in Spring 2022 whose decision can be appealed to the NLRB. If the Board rules in favor of the employees, the Board must petition a Court of Appeals for enforcement.³⁶

Chipotle's blatant behavior likely prompted the NLRB to seek the boldest available remedy – forcing Chipotle to reopen the Augusta store. This remedy is rare, but not unprecedented. Even when Courts find *Darlington* violations, it has sometimes resists forcing employers to reopen closed facilities if such a reopening might threaten the business' viability.³⁷ More common remedies include reinstatement, backpay and notice posting. If the workers are awarded backpay, their award will be decreased by their interim earnings between when they lost their jobs and when they received the award. Punitive damages are unavailable and undocumented immigrants cannot receive backpay at all.³⁸

³⁴ Order Consolidating Cases, Consolidated Complaint and Notice of Hearing at 3–4, Chipotle Mexican Grill and Chipotle United, 01-CA-299617, (Ordered Nov. 4 2022); see also Beverly Banks, *NLRB Attys Say Chipotle Closure Amid Organizing Was Illegal*, Law360 (Nov. 4 2022, 3:38 PM), <https://www.law360.com/employment-authority/articles/1546598/nlr-attys-say-chipotle-closure-amid-organizing-was-illegal>.

³⁵ 29 U.S.C. § 160(j) (commonly referred to as 10(j) injunctions) provides for such relief.

³⁶ The parties can also decide to settle at any point during this process.

³⁷ *Lear Siegler, Inc.*, 295 NLRB 857, 861 (1989) (holding that to order restoration of a closed operation, the Board must demonstrate that such an order would not be unduly burdensome or endanger “the respondent’s continued viability”; *in re Chariot Marine Fabricators & Indus. Corp.*, 335 NLRB at 356–58 (2001) (rejecting a reopening order in favor of a make whole remedy because reopening would be unduly burdensome on the employer).

³⁸ *Republic Steel Corp. v. NLRB*, 311 U.S. 7, 11–12 (U.S. 1940); *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 150–52 (2002).

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NLRB General Counsel Abruzzo has encouraged the Board to take a more progressive approach than it has in the past.³⁹ She said, “[the NLRB must] utilize every possible tool we have to ensure that those wronged by unlawful conduct obtain true justice. To do this, we need to examine all of the ways that workers have been hurt by unfair labor practices and seek remedies that will fully address them.” This case is an opportunity to clarify an opaque area of law in a high-profile case.

Since NLRB orders must be enforced by a federal court, they can be denied by a federal judge with a restrictive view of the Board’s authority. Previous efforts by the Board to strengthen the Act have been halted by federal courts.⁴⁰ Courts have generally been deferential to federal agencies, but this may be changing.⁴¹ In *West Virginia v. EPA* the Supreme Court stated, “our precedent teaches that there are ‘extraordinary cases’ that call for a different approach—cases in which the ‘history and the breadth of the authority that [the agency] has asserted,’ and the ‘economic and political significance’ of that assertion, provide a “reason to hesitate before concluding that Congress” meant to confer such authority”.⁴² This suggests that courts will be increasingly skeptical of assertions of authority by agencies like the NLRB.

IV. Broader Considerations

³⁹ National Labor Relations Board, *NLRB General Counsel Jennifer Abruzzo Issues Memo on Seeking all Available Remedies to Fully Address Unlawful Conduct*, (Sept. 8 2021), <https://www.nlr.gov/news-outreach/news-story/nlr-general-counsel-jennifer-abruzzo-issues-memo-on-seeking-all-available>.

⁴⁰ *Natl. Ass’n of Mfrs. v. NLRB* 717 F.3d 947, 949–953, 967–970 (D.C. Cir. 2013), overruled by *Am. Meat Inst. v. U.S. Dept. of Agric.*, 760 F.3d 18 (D.C. Cir. 2014) (overruled on other grounds).

⁴¹ *Chevron v. Nat. Resources Def. Council, Inc.*, 467 U.S. 837, 842–45 (1984).

⁴² *W. Virginia v. EPA*, 142 S.Ct. 2587, 2608 (2022); *See also* *Kisor v. Wilkie*, 139 S. Ct. 2400, 2414–2420 (2019).

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The surge in organizing has been met with an anti-union backlash from employers.⁴³ Closing a store in response to an organizing drive is a potent tactic for chilling organizing drives in national chains. When employers use these tactics, the NLRB must fight vigorously to hold them accountable. Policymakers must take action to strengthen the NLRB, and to clarify its remedies and penalties to ensure compliance.

The nationwide unionization wave has spread to several chains that might consider adopting *Darlington* tactics. Companies like Trader Joe's, Apple, and Home Depot are so profitable that they can afford to close branches to stop an organizing drive in its tracks.⁴⁴ Of course, management does not have to oppose organizing. In recent months several prominent employers including Condé Nast, Microsoft, and the MLB voluntarily recognized unions.⁴⁵

Policymakers must ensure the NLRB has the resources to enforce the law in a timely and effective manner. In *Darlington*, the NLRB directed the employer to pay backpay rather than reopening the plant. The matter was settled fifteen years after the Supreme Court case, when the company paid millions to the workers and their estates. Injunctive relief should be a default option in these cases since delay benefits the employer – bills do not wait for NLRB adjudications and employees must meet their basic needs while they wait for their rights to be enforced. Defunding the NLRB has exacerbated the agency's delays; until the 2022 omnibus, the

⁴³ National Labor Relations Board, *First Three Quarters' Union Election Petitions Up 58%, Exceeding all FY21 Petitions Filed* (July 15 2022), <https://www.nlr.gov/news-outreach/news-story/correction-first-three-quarters-union-election-petitions-up-58-exceeding>; Order Consolidating Cases, Consolidated Complaint and Notice of Hearing at 17, Starbucks Corporation and Workers United, 03-CA-295470, (Ordered Nov. 1 2022).

⁴⁴ Michael Sainato, *Mass firings, wage cuts and open hostility: workers are still unionizing despite obstacles*, THE GUARDIAN (Sept. 13 2022, 5:00 PM), <https://www.theguardian.com/us-news/2022/sep/13/unions-starbucks-trader-joes-chipotle-petco>.

⁴⁵ Elahe Izadi, *Condé Nast workers win recognition of company-wide union*, WASH. POST (Sept. 9 2022, 5:23 PM), <https://www.washingtonpost.com/media/2022/09/09/conde-nast-union/>; Héctor Alejandro Arzate, *Video Game Testers From Rockville Form Microsoft's First Union*, DCIST (Jan. 4 2023), <https://dcist.com/story/23/01/04/md-microsoft-union-video-game/>; James Wagner, *M.L.B. Will Voluntarily Recognize Minor League Union*, N.Y. TIMES (Sept. 9 2022), <https://www.nytimes.com/2022/09/09/sports/baseball/minor-league-union.html>.

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NLRB's funding had been stagnant since 2014.⁴⁶ This reduced the Board's staffing levels by 39 percent in the last twenty years.⁴⁷

Legislators should rework the *Darlington* test. The current test relies on the chilling effect of the partial closure upon the employees who were not directly affected by the closure. This approach contrasts with how other NLRA cases are decided.⁴⁸ Courts should focus their analysis on the employer's interference with the collective bargaining rights of the workers in the closed down plant itself. Further, legislators should clarify the standard for evaluating partial closure cases, specifically distinguishing between permissible and impermissible economic motivations.

Legislative change is needed, but workers are not waiting for it. In August 2022, workers at a Chipotle in Michigan voted to unionize, becoming the first unionized Chipotle.⁴⁹ The fight to organize Chipotle workers continues.

⁴⁶ Gay Semel, *Viewpoint: The NLRB is Underfunded and Understaffed –And That's a Big Threat to the Current Organizing Wave*, LABOR NOTES, (July 6 2022), <https://labornotes.org/2022/07/viewpoint-nlr-undereunded-and-understaffed>; Daniel Wiessner, *U.S. budget bill includes first increase for labor board since 2014*, REUTERS, (Dec. 20 2022, 1:34 PM), <https://www.reuters.com/legal/government/us-budget-bill-includes-first-increase-labor-board-since-2014-2022-12-20/>.

⁴⁷ Letter from Senator Bob Casey to Chair Murray and Ranking Member Blunt, Senate HELP Committee, May 10, 2022, <https://www.casey.senate.gov/download/letter-to-appropriations-labor-subcommittee-on-nlr-undereunded>.

⁴⁸ *Eastex, Inc. v. N.L.R.B.*, 437 U.S. 556, 565–67 (1978); *Republic Aviation Corp. v. N.L.R.B.*, 324 U.S. 793, 801–5 (1945).

⁴⁹ Lauren Kaori Gurley, *Michigan Chipotle outlet the chain's first to unionize*, WASH. POST (August 25 2022, 6:57 PM), <https://www.washingtonpost.com/business/2022/08/25/chipotle-union-victory-fastfood-michigan/>.

Applicant Details

First Name	Rushi
Last Name	Shah
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City
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State/Territory
Massachusetts
Zip
02138
Country
United States

Contact Phone Number	2027657424
----------------------	-------------------

Applicant Education

BA/BS From	University of Texas-Austin
Date of BA/BS	May 2020
JD/LLB From	Harvard Law School
	https://hls.harvard.edu/dept/ocs/
Date of JD/LLB	May 15, 2024
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	National Security Journal
	Journal of Law and Gender
Moot Court Experience	Yes
Moot Court Name(s)	Ames Moot Court Competition

Bar Admission**Prior Judicial Experience**

Judicial Internships/Externships	No
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

Specialized Work Experience **Prison Litigation**

Recommenders

Freeman, Jody
freeman@law.harvard.edu
617-496-4121

Rakoff, Todd
trakoff@law.harvard.edu
617-495-4634

Halley, Janet
jhalley@law.harvard.edu
617-496-0182

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Rushi Shah
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(202)-765-7424
rshah@jd24.law.harvard.edu

June 12, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to apply to a clerkship in your chambers starting any term after I graduate from Harvard Law School in May 2024. One of the reasons I would like to clerk for you is because my entire immediate family lives in Virginia.

I have enclosed my resume, my law school transcript, and a writing sample to this application. I am happy to provide additional writing samples upon request.

Professors Janet Halley, Jody Freeman, and Todd Rakoff will be providing letters of recommendation on my behalf. They may also be contacted directly as references via email or phone.

Prof. Janet Halley
Feminist Legal Theory
jhalley@law.harvard.edu
(617) 496-0182

Prof. Jody Freeman
Administrative Law
freeman@law.harvard.edu
(617) 496-4121

Prof. Todd Rakoff
Legislation and Regulation
trakoff@law.harvard.edu
(617) 495-4634

I am happy to provide any further information. Thank you for your time and consideration.

Sincerely,

/s/ Rushi Shah

Rushi Shah

Rushi Shah

he/him/his
(202)-765-7424
✉ rshah@jd24.law.harvard.edu

Education

- May 2024 **Harvard Law School, J.D.** (*in progress*)
- Sept. 2021 **Princeton University, M.A.** *Computer Science*
- May 2020 **University of Texas at Austin, B.S.** *Computer Science & B.S. Mathematics (Turing Scholar)*
- May 2016 **Thomas Jefferson High School for Science and Technology (TJHSST)**

Work Experience

- Summer 2023 **Alaska Public Defender: Criminal Division, Legal Intern**, Anchorage, AK
 - Will represent clients throughout their criminal trials and appeals
- Summer 2022 **Legal Aid Society of NY: Prisoners' Rights Project, Legal Intern**, New York City, NY
 - Drafted an originalist memo on how the drafters of the New York state constitution's cruel and unusual punishment provision rejected the practice of solitary confinement around 1846; memo supported an ongoing lawsuit based on the new Humane Alternatives to Long Term (HALT) Solitary Confinement legislation
 - Drafted a procedural memo on using Fed. Rule of Civ. Proc. 60(b)(5) to extend the court-ordered monitoring of educational services provided in NY city jails like Rikers in light of violations during COVID-19
 - Drafted an urgent memo during a lockdown at Great Meadows Correctional Facility on violations of minimum mail, shower, and meal requirements for inmates mandated by the NY Codes, Rules, and Regulations
 - Advocated for four clients on their mistreatment in state prisons; their issues included prescription medication, reasonable accommodations for blindness, epileptic seizure consequences, and LGBTQ+ safety concerns
- Summer 2021 **New Mexico Public Defender: Felony Trial Division, Legal Intern**, Albuquerque, NM
 - Worked under 11 attorneys for 19 clients on research/writing, direct client work, trial prep, and doc review
 - Drafted a motion to suppress, a memo on Miranda waiver validity while intoxicated, and a memo on a double jeopardy challenge to firearm enhancements; cite checked, proofread, and edited other pieces
 - Assisted heavily in preparation for jury trial of one client accused of murder (found not guilty on all counts)
 - Reviewed police lapel videos, client criminal histories, evidence, depositions, and other discovery documents
- 2020-2021 **Princeton Center for Information Technology Policy, Research Assistant**, Princeton, NJ
 - Quantitatively measured the spread of viral neo-Nazi content across multiple online platforms

Journals

- Fall 2023 **Harvard National Security Journal, Volume 14**, "*Central Bank Digital Currencies*", Subciter
- Spring 2022 **Harvard Journal of Law and Gender, Volume 45**, "*Eliminating 'Built-In Headwinds'*", Subciter

Activities

- 2023 **Ames Moot Court Competition, Semifinalist (top 4 of 53 teams)**
 - Advanced to the semifinal elimination round of Harvard's appellate brief writing competition
- Fall 2023 **Criminal Justice Institute, Student Attorney**
 - Will represent clients during their criminal trials as part of this Harvard clinic
- 2022-2024 **Harvard Defenders, Student Attorney**
 - Represented three clients in five show-cause hearings on charges such as larceny and assault
- 2022-2024 **Harvard South Asian Law Students Association (SALSA), President**
 - Organized speaker events on, e.g., recent protests in Punjab, the Bhopal gas tragedy, and the 1947 partition

Interests

Visiting public parks and libraries; reading my friends' favorite books and poetry

Harvard Law School

Record of: Rushi Shah
 Current Program Status: JD Candidate
 Pro Bono Requirement Complete

Date of Issue: June 2, 2023
 Not valid unless signed and sealed
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JD Program				2301	Feminist Legal Theory Halley, Janet	H	3
Fall 2021 Term: September 01 - December 03							Fall 2022 Total Credits: 11
1000	Civil Procedure 7	P	4				
1002	Charles, Guy-Uriel Criminal Law 7	P	4	7002W	Fall-Spring 2022 Term: September 01 - May 31 Independent Writing Modirzadeh, Naz	P	2
1006	Kamali, Elizabeth Papp First Year Legal Research and Writing 7A Tobin, Susannah * Dean's Scholar Prize	H*	2	3500	Writing Group: Public International Law; International Law and War Armed Conflict; International Law and War Modirzadeh, Naz	CR	1
1003	Legislation and Regulation 7	P	4		Fall-Spring 2022 Total Credits: 3		
1004	Rakoff, Todd Property 7 Smith, Henry	P	4	2249	Winter 2023 Term: January 01 - January 31 Trial Advocacy Workshop Sullivan, Ronald	CR	3
1055	Introduction to Trial Advocacy Newman, Thomas	CR	3	2651	Spring 2023 Term: February 01 - May 31 Civil Rights Litigation Michelmann, Scott	P	3
1024	Constitutional Law 7	P	4	2453	Constitutional History II: From Reconstruction to the Civil Rights Movement Klarman, Michael Evidence Rubin, Peter	H	3
1001	Gersen, Jeannie Suk Contracts 7	P	4	2079	Spring 2023 Total Credits: 8 Total 2022-2023 Credits: 25	P	2
1006	Coates, John First Year Legal Research and Writing 7A Tobin, Susannah	P	2		Fall 2023 Term: August 30 - December 15 Federal Courts and the Federal System Goldsmith, Jack	~	5
3100	Reconstruction Originalism Lessig, Lawrence	H	2	2086	Fall 2023 Total Credits: 5		
1005	Torts 7 Sargentich, Lewis	P	4		Fall 2023 - Winter 2024 Term: August 30 - January 19 Criminal Justice Institute: Criminal Defense Clinic Umunna, Dehila	~	5
2000	Administrative Law Freeman, Jody	H	4	8002	Criminal Justice Institute: Defense Theory and Practice Umunna, Dehila	~	4
2050	Criminal Procedure: Investigations Crespo, Andrew	P	4	2261	Fall 2023 - Winter 2024 Total Credits: 9 Spring 2024 Term: January 22 - May 10 Public International Law Blum, Gabriella	~	4
				2212			

continued on next page

Rush Shah
 Assistant Dean and Registrar

Rushi Shah
Assistant Dean and Registrar

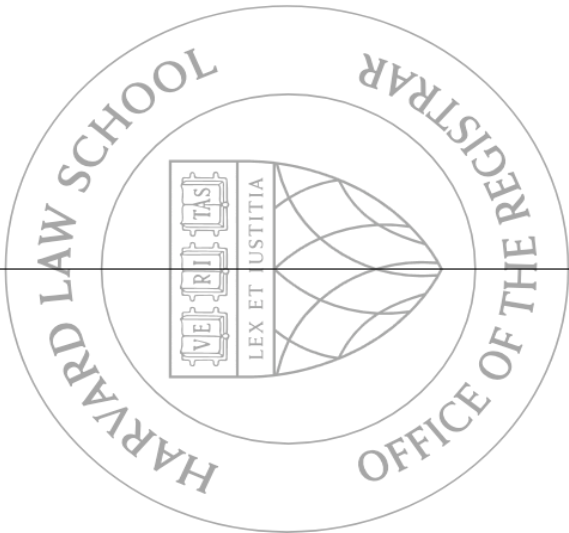
Harvard Law School

Record of: Rushi Shah

Date of Issue: June 2, 2023
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Page 2 / 2

Spring 2024 Total Credits: 4
Total 2023-2024 Credits: 18
Total JD Program Credits: 80

End of official record



HARVARD LAW SCHOOL
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registrar@law.harvard.edu

Transcript questions should be referred to the Registrar.

In accordance with the Family Educational Rights and Privacy Act of 1974, information from this transcript may not be released to a third party without the written consent of the current or former student.

A student is in good academic standing unless otherwise indicated.

Accreditation

Harvard Law School is accredited by the American Bar Association and has been accredited continuously since 1923.

Degrees Offered

J.D. (Juris Doctor)
LL.M. (Master of Laws)
S.J.D. (Doctor of Juridical Science)

Current Grading System

Fall 2008 – Present: Honors (H), Pass (P), Low Pass (LP), Fail (F), Withdrawn (WD), Credit (CR), Extension (EXT)

All reading groups and independent clinicals, and a few specially approved courses, are graded on a Credit/Fail basis. All work done at foreign institutions as part of the Law School's study abroad programs is reflected on the transcript on a Credit/Fail basis. Courses taken through cross-registration with other Harvard schools, MIT, or Tufts Fletcher School of Law and Diplomacy are graded using the grade scale of the visited school.

Dean's Scholar Prize (*): Awarded for extraordinary work to the top students in classes with law student enrollment of seven or more.

Rules for Determining Honors for the JD Program

Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.

May 2011 - Present
Summa cum laude

To a student who achieves a prescribed average as described in the Handbook of Academic Policies or to the top student in the class

Magna cum laude
Cum laude
Next 10% of the total class following *summa* recipient(s)
Next 30% of the total class following *summa* and *magna* recipients

All graduates who are tied at the margin of a required percentage for honors will be deemed to have achieved the required percentage. Those who graduate in November or March will be granted honors to the extent that students with the same averages received honors the previous May.

Prior Grading Systems

Prior to 1969: 80 and above (A+), 77-79 (A), 74-76 (A-), 71-73 (B+), 68-70 (B), 65-67 (B-), 60-64 (C), 55-59 (D), below 55 (F)

1969 to Spring 2009: A+ (8), A (7), A- (6), B+ (5), B (4), B- (3), C (2), D (1), F (0) and P (Pass) in Pass/Fail classes

Prior Ranking System and Rules for Determining Honors for the JD Program

Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.

Prior to 1961, Harvard Law School ranked its students on the basis of their respective averages. From 1961 through 1967, ranking was given only to those students who attained an average of 72 or better for honors purposes. Since 1967, Harvard Law School does not rank students.


1969 to June 1998
Summa cum laude
Magna cum laude
Cum laude
General Average
7.20 and above
5.80 to 7.199
4.85 to 5.799

June 1999 to May 2010

Summa cum laude General Average of 7.20 and above (exception: *summa cum laude* for Class of 2010 awarded to top 1% of class)
Magna cum laude Next 10% of the total class following *summa* recipients
Cum laude Next 30% of the total class following *summa* and *magna* recipients

Prior Degrees and Certificates

LL.B. (Bachelor of Laws) awarded prior to 1969.
The L.T.P. Certificate (not a degree) was awarded for successful completion of the one-year International Tax Program (discontinued in 2004).


Assistant Dean and Registrar

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend Rushi Shah for a clerkship in your chambers in 2024-25 or the following year, after his graduation from Harvard Law School in May 2024. Rushi has a powerful analytic mind and is a rigorous critical thinker. He has excellent research and writing skills and can translate difficult concepts into clear prose. He is intellectually curious, detail-oriented, and likes to work through complex legal puzzles. I think he will make a strong clerk.

Rushi was a student in my Administrative Law class in the Fall of 2022. He was an enthusiastic participant in class discussion and often made incisive points. I recall one intervention when we were discussing the potential uses of artificial intelligence by administrative agencies. Based on his background in computer science, Rushi had strong views about the potential for AI to undermine due process and accountability. His comments were smart and well-reasoned, and his perspective benefited both the students and me.

Rushi earned an Honors grade in Administrative Law, which is an impressive achievement. For context, this is a highly competitive class of 115 students, and the 8-hour exam is known to be challenging. Rushi wrote a terrific answer to the long issue spotter on the exam, which involved a hypothetical effort by the Securities and Exchange Commission to regulate cryptocurrency. His answer displayed his comprehensive knowledge of the Administrative Procedure Act, the adjudicative and regulatory process, and the standards of review we had studied. He skillfully applied the major questions doctrine, along with the *Mead* and *Skidmore* tests, which the problem called for. He expertly identified several procedural errors the agency had made and explained why they violated the APA.

The exam also included three prompts asking for short answers about recent doctrinal developments in administrative law. On this section of the exam, Rushi displayed his deep understanding of the case law concerning appointments and removal, pretext and arbitrary/capricious review, and justiciability. In short, I am confident, based on this exam performance, that Rushi knows his administrative law.

Rushi's transcript is a mix of Honors and Pass grades, but I think it important to put his record in context because I do not think it fully reflects his analytic acumen or legal knowledge. Rushi comes from a math and computer science background as you can see from his record, and indeed was on track to get a Ph.D. in computer science at Princeton before deciding he could have a greater impact on the world with a law degree. His STEM training certainly shows in his supremely logical mind, his ability to distill complex ideas to their essence, and his clear writing. But his background perhaps has not prepared him especially well for the unique nature of law school exams, which typically require students to quickly analyze long fact patterns and disgorge everything they know under intense time pressure. Rushi has said that he excels when he has a bit more time for thinking and writing, which is evident in his answer to my 8-hour take-home exam, in his Dean's Scholar prize for Legal Research and Writing, and in his impressive semi-final performance in the Ames Moot Court competition.

Indeed, although he received Honors from me, Rushi still approached me for advice on how to improve his exam performance in the future. He shared with me that he usually does better on final papers than final exams, and wanted advice on what he had done well, and how to do even better. I told him that if there was one thing he might work on, it is that he tends to lead with a description of the problem and the caselaw, rather than argue a position from the get-go. I suggested that he work on adopting a stronger argument posture from the outset, especially for purposes of brief-writing. I could tell that Rushi took this advice to heart and give him credit for being so proactive.

Rushi has said that making the decision to leave computer science for law was a leap of faith, since he has no lawyers in his family and because lawyers are underrepresented in his South Asian community. But he is clearly happy he made that leap, and excited to pursue a career of public service as a public defender. Indeed, he is laser focused on this goal. He wants to clerk in district court so that he can learn to navigate trial strategy better for his clients. And he wants to clerk at the appellate level to broaden his understanding of diverse areas of law before specializing in criminal law.

I am confident that Rushi has all the skills necessary to be an excellent clerk and recommend him to you most highly.

If I can be of any further assistance, please do not hesitate to call.

Sincerely,

Jody Freeman
Archibald Cox Professor of Law
Director, Environmental & Energy Law Program

Jody Freeman - freeman@law.harvard.edu - 617-496-4121

June 10, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to you regarding Rushi Shah, a rising 3L student here. As I understand it, he is applying to clerk for you after graduation.

I taught Rushi in his first semester in law school, in the course in Legislation and Regulation. On the blindly-graded final examination he earned a P (Pass) grade. Looking at his transcript I see that he has earned a P in many of his courses, although sometimes an H (Honors). The reason that I am writing for him, is that I think he is more able, considerably more able, than his transcript shows. Some students just don't do as well on examinations as they should; I don't know why. But in class, Rushi was really one of the outstanding participants in the group of 80. He was good at analyzing the case at hand and he was good at raising more far-reaching questions. In my office – and he came to office hours often – he also showed both a real command of the subject matter and an interest in exploring speculative topics. (We once discussed the question whether, in interpreting religious texts, we should assume that God is consistent.) When I graded the Leg/Reg exams, I was surprised, when I finally learned which students had earned which grades, to see that Rushi had a P. I had expected an H.

Rushi plans on being a public defender. He has worked his summers here both to represent individuals and to improve the criminal system overall. I think he is very good in those roles. He is committed, but not ideological; he also cares about facts and particulars. He is, as far as I can tell, hard working. And, as I have said, I think he is very able. For the same reasons, I think he will be a good judicial clerk.

Sincerely yours,

Todd Rakoff
Byrne Professor of Administrative Law

Todd Rakoff - trakoff@law.harvard.edu - 617-495-4634

June 07, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend RUSHI SHAH for a clerkship in your chambers. Rushi took Feminist Legal Theory from me in the Fall of 2022. He got an H, our highest letter grade, and missed winning one of the 3 (strictly rationed) Deans Scholar Prizes by an arbitrarily small increment in his raw score. I offered to write letters of recommendation to say at least that, and I'm very pleased to be writing for his clerkship search.

This is a man of real substance. He is dedicated to a career in public service and is preparing for it with wise choices and hard work. In class he was both gentle and persistent, always asking questions when he did not understand something and every time it improved the class for us to pause and get it right before moving on.

The class was built around 6 writing assignments, each of which was a short paper on the readings. I circulated questions for the first 5 of them. For those shorter papers, I read them and invited revisions if I had the sense that the paper could clearly benefit from my advice. Rushi took advantage of every such invitation. The sixth was a longer paper, around 8 double spaced pages, and students had to devise their own topics for this assignment. For all the papers, 10 was the highest possible score.

I thought you might want to see the compilation of my responses to, and scores for, Rushi's papers.

Here they are:

Raw feedback

Assignment 1: 10

"Rushi, this is nonstop excellent! Great structure, wonderful marshalling of detail, so cool that you got to the example at the end. It's a perfect inverted pyramid. Elegant."

Assignment 2: 5 -> 10

"Oh I'm so glad you did this Rushi. It's terrific now. Just packed like a walnut – well ordered, well-written, great quotes, and exact contrasts."

Assignment 3: 10

"Rushi, this is just excellent. You have a strong thesis that's surprising and a bit challenging – even when moving on they remain stuck to their initial entry point. Well done line for line, quote for quote, example for example. Very very fine work."

Assignment 4: free revision -> 9

"Sooooooooooooooooo much better Rushi. This is now precised and focused all the way thru."

Assignment 5: 10

"WOW Rushi!!! This is excellent – just amazingly comprehensive, exact, and smart in finding the correspondences. Substantively thorough. Elegant writing. So thoughtful. You really GET these two complex arguments, in full and together. Wish I could give this a higher score. It's a standout."

Longer paper: 10

"What an elegant paper. You extract so much, so accurately about (mostly left) aspects of the Black liberation movement of the 60's and early 70's from Peller, and then do a GREAT job situating the Combahee River Collective's careful, conscious positions vis a vis all of them. It's accurate, well framed, highly accurate, well sequenced, and just exciting to read."

In discussing his writing with me, I learned something surprising. Rushi uses his background in computer science to set the standard for logical structure and exposition in his written work, whether it be a brief or an intellectual history of Black nationalism. You can really see the results in my comments. I consistently noted that Rushi's papers were elegantly constructed. This orderliness of mind allowed him to probe more deeply than almost any of his peers in the class into the very challenging materials we read.

Rushi is the child of South Asian immigrants to the United States. Another thing I think you might want to know about him is his high comfort level with social and ideological difference. He prizes his ability to appreciate other people's experiences, arguments, and perspectives. This quality certainly was manifest in Rushi's work in Feminist Legal Theory, where I teach the differences between the main strands of feminism that have worked on law, favoring none and insisting only that the students understand them in their best versions. Rushi took to that approach like a duck to water.

I think extremely highly of this young man. I think he will have a distinguished legal career. But more to the point right now, I think he will be an excellent clerk. He is an insightful reader, a probing questioner, a wonderful writer and a generous team member. I

Janet Halley - jhalley@law.harvard.edu - 617-496-0182

recommend him to you in superlatives and absolutely no reservations.

Yours sincerely,
Janet Halley

Janet Halley - jhalley@law.harvard.edu - 617-496-0182

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WRITING SAMPLE

I prepared the following section of a 45-page appellate brief submitted during the semifinal round of the Ames Moot Court Competition at Harvard Law School. Although I competed as part of a team of six, this section reflects my own research and writing.

The relevant facts you should be aware of before reading the excerpt are as follows: When the governor of the fictional state of Ames announced a controversial decision on her social media page, one of her constituents—Ms. Lillianfield—commented on the post with harshly worded criticism. The Governor blocked Ms. Lillianfield from the official page for one week. The Governor’s office also spoke with the CEO of the social media company, after which Ms. Lillianfield was permanently removed from the platform. Ms. Lillianfield sued Governor Nathanson for violations of her First Amendment rights. Ms. Lillianfield lost in the District Court, and now appeals to the Ames Circuit Court of Appeals.

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QUESTIONS PRESENTED

1. [Question 1 omitted.]
2. [Question 2 omitted.]
3. Does the *Ex parte Young* exception to the Eleventh Amendment apply to a First Amendment suit for injunctive and declaratory relief against the Governor of Ames in her official capacity?

SUMMARY OF ARGUMENT

[Summary of arguments for sections I and II omitted.]

Ms. Lillianfield seeks injunctive and declaratory relief for these two constitutional violations. Although the Governor attempts to invoke the Eleventh Amendment, Ms. Lillianfield falls well within the boundaries of the Supreme Court’s longstanding *Ex parte Young* exception. *See generally* 209 U.S. 123 (1908). By suing Governor Nathanson in her official capacity for exclusively prospective relief to ongoing constitutional violations, Ms. Lillianfield empowers this Court to protect the rule of law.

ARGUMENT

- I. [Section I omitted.]
- II. [Section II omitted.]
- III. **Federal courts have the power to grant Ms. Lillianfield relief from the Governor’s unconstitutional actions.**

The Eleventh Amendment bars suits against a State “by Citizens of another State,” U.S. CONST. amend. XI, or by citizens of that same State, *Hans v. Louisiana*, 134 U.S. 1, 15, 20–21 (1890). However, the Supreme Court “has recognized an

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important exception to this general rule: a suit challenging the constitutionality of a state official's action is not one against the State.” *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 102 (1984) (citing *Ex parte Young*, 209 U.S. 123 (1908)). To determine if the *Ex parte Young* exception to the Eleventh Amendment applies, the Court “need only conduct a ‘straightforward inquiry into whether [the] complaint [1] alleges an ongoing violation of federal law and [2] seeks relief properly characterized as prospective.’” *Virginia Off. for Prot. & Advoc. v. Stewart*, 563 U.S. 247, 255 (2011) (first alteration in original) (quoting *Verizon Maryland, Inc. v. Pub. Serv. Comm’n of Maryland*, 535 U.S. 635, 645 (2002)). Ms. Lillianfield’s complaint satisfies both components of this “straightforward inquiry.”

A. The complaint alleges that Governor Nathanson is violating Ms. Lillianfield’s First Amendment rights.

The first prong of the straightforward inquiry requires that the complaint “alleges an ongoing violation of federal law.” *Virginia Off.*, 563 U.S. at 255. When the defendant engages in a violation of federal law, she is “stripped of [her] official or representative character.” *Ex parte Young*, 209 U.S. at 159–60.¹ In such cases, “[t]he state has no power to impart to [the state official] any immunity from responsibility”

¹ Governor Nathanson being stripped of her representative character for the purposes of the Eleventh Amendment is not in tension with her actions constituting state action for the purposes of the First Amendment incorporated through the Fourteenth Amendment, discussed *supra* Sections I.B, II.A. “There is a well-recognized irony in *Ex parte Young*; unconstitutional conduct by a state officer may be ‘state action’ for purposes of the Fourteenth Amendment yet not attributable to the State for purposes of the Eleventh.” *Fla. Dep’t of State v. Treasure Salvors, Inc.*, 458 U.S. 670, 685 (1982).

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through the Eleventh Amendment. *Ex parte Young*, 209 U.S. at 160. The exception focuses “on cases in which a violation of federal law by a state official is *ongoing* as opposed to cases in which federal law has been violated at one time or over a period of time in the past.” *Papasan v. Allain*, 478 U.S. 265, 277–78 (1986) (emphasis added). When determining if the *Ex parte Young* exception applies, the Court does not analyze the merits of the underlying claim, *Verizon*, 535 U.S. at 646, but asks merely whether the allegations sufficiently establish the Court’s jurisdiction.

In this case, Ms. Lillianfield alleges two ongoing violations of her federal First Amendment rights. *See* JA-2–3; *Verizon*, 535 U.S. at 646 (holding mere allegations to be sufficient).

1. Governor Nathanson’s block of Ms. Lillianfield constitutes ongoing censorship of the posts Ms. Lillianfield made during her week-long shadow ban.

The Governor’s office blocked Ms. Lillianfield’s account on or around June 16th, 2021. *See* JA-4–5. This block includes a shadow ban that prevents any user other than Ms. Lillianfield from ever seeing the posts she made on the @AmesGov page that week. *See* JA-5–6. Ms. Lillianfield did make posts that week, JA-6, but those posts remain censored to this day, *see* JA-5 (“[S]hadow-banned posts are not visible to other users accessing the site.”). This ongoing censorship of Ms. Lillianfield’s posts from that week allegedly contravenes the First Amendment, *supra* Parts I, II, and thus entitles Ms. Lillianfield to *Ex parte Young*’s exception to the Eleventh Amendment, *see Papasan*, 478 U.S. at 277–78.

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2. Governor Nathanson’s standing threat regarding Ms. Lillianfield’s posts and Snapface’s state subsidies constitutes ongoing censorship.

Circuit courts have recognized that an ongoing constitutional violation exists where a state official’s standing threats continue to limit speech. *See, e.g., Backpage.com, LLC v. Dart*, 807 F.3d 229, 231 (7th Cir. 2015). In *NiGen Biotech, L.L.C. v. Paxton*, the Texas Attorney General sent threatening letters to retailers responsible for presenting the plaintiff’s products to the general public. 804 F.3d 389, 392 (5th Cir. 2015). These letters threatened imminent enforcement actions because of the content of the plaintiff’s speech, which led the retailers to remove the plaintiff’s products from their shelves. *See id.* at 392, 397. The Fifth Circuit held that the state official’s “continued refusal . . . to justify its threatening letters still inflicts . . . constitutional violations.” *Id.* at 395. Similarly, Governor Nathanson’s office threatened the social media platform responsible for presenting Ms. Lillianfield’s posts to the general public which led Snapface to ban Ms. Lillianfield permanently from the platform. JA-7–8. Moreover, Governor Nathanson’s continued refusal to revoke her threats inflicts ongoing constitutional violations that entitle Ms. Lillianfield to *Ex parte Young*’s exception to the Eleventh Amendment.

B. The complaint seeks prospective injunctive and declaratory relief, neither of which impose financial liability on the state of Ames.

The second prong of the straightforward inquiry requires that the complaint “seeks relief properly characterized as prospective.” *Virginia Off.*, 563 U.S. at 255. Unlike the prospective injunction granted in *Ex parte Young*, complaints that seek to

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secure money damages are barred by the Eleventh Amendment. *See, e.g., Edelman v. Jordan*, 415 U.S. 651, 664, 668 (1974). “The distinction between that relief permissible under the doctrine of *Ex parte Young* and that found barred in *Edelman* was the difference between prospective relief on one hand and retrospective relief on the other.” *Quern v. Jordan*, 440 U.S. 332, 337 (1979). This distinction was drawn because monetary damages suits more directly implicate the sovereign immunity interests protected by the Eleventh Amendment. *See Dugan v. Rank*, 372 U.S. 609, 620 (1963) (“[A] suit is against the sovereign if ‘the judgment sought would expend itself on the public treasury or domain, or interfere with the public administration.’” (quoting *Land v. Dollar*, 330 U.S. 731, 738 (1947))). To determine if the relief is properly characterized as retrospective, courts “look to the substance rather than to the form of the relief sought and will be guided by the policies underlying the decision in *Ex parte Young*.” *See Papasan*, 478 U.S. at 279 (citation omitted). Ms. Lillianfield seeks two types of relief, both of which are sufficiently prospective.

1. Ms. Lillianfield seeks prospective relief to enjoin the Governor’s ongoing constitutional violations.

Count I of the complaint regarding Governor Nathanson’s ongoing censorship of Ms. Lillianfield’s shadow banned posts, *see supra* Section III.A.1, requests injunctive relief. JA-9. This remedy requires merely that Governor Nathanson unblock Ms. Lillianfield’s account. Count II of the complaint regarding Governor Nathanson’s standing threat against Snapface about Ms. Lillianfield, *see supra* Section III.A.2, also requests injunctive relief. JA-9. Revoking the threat will likely

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be just as financially insignificant as originally issuing the threat was for Governor Nathanson. *See* JA-7–8 (“[H]er chief of staff reached out to Snapface’s CEO to complain about Plaintiff’s posts.”).

Because neither of the two forms of injunctive relief sought by Ms. Lillianfield impose financial burdens on the State of Ames to remedy past violations, they are sufficiently prospective for the second prong of the straightforward inquiry.

2. Ms. Lillianfield seeks declaratory relief ancillary to her prayer for injunctive relief.

Prospective relief can also include declaratory relief in the form of a notice of past misconduct if it is “ancillary to the prospective relief already ordered by the court.” *Quern*, 440 U.S. at 349. However, declaratory relief is barred when it would be more properly characterized as retrospective because it would be functionally equivalent to money damages. *Compare Green v. Mansour*, 474 U.S. 64, 73 (1985) (rejecting federal declaratory relief that would exclusively be used to establish res judicata in an action for monetary damages in state court), *with Verizon*, 535 U.S. at 646 (permitting the consideration of declaratory relief because “[i]nsofar as the [monetary] exposure of the State is concerned, the prayer for declaratory relief adds nothing to the prayer for injunction”).

In addition to the requests for injunctive relief specified in counts I and II, “Ms. Lillianfield asks this Court to declare that the Governor’s actions were unlawful.” JA-3. Such a declaration by the Court may guide Snapface’s future decisions about restoring Ms. Lillianfield’s account without creating monetary exposure for the state.

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Therefore, declaratory relief ancillary to the injunctions against Governor Nathanson's ongoing constitutional violations satisfies the prospective requirement in the Court's straightforward inquiry regarding the *Ex parte Young* exception.

C. Federal courts regularly exercise jurisdiction over claims like Ms. Lillianfield's to protect the rule of law.

Federal courts frequently exercise jurisdiction over § 1983 claims arising under the First Amendment, notwithstanding the Eleventh Amendment. *See, e.g., Rosenberger v. Rector & Visitors of the Univ. of Virginia*, 515 U.S. 819, 827–28 (1995). Federal courts also exercise their jurisdiction against state governors in particular. *See, e.g., Sterling v. Constantin*, 287 U.S. 378, 393 (1932).

The Court exercises its jurisdiction in such cases to protect the rule of law. In *Sterling*, the governor of Texas was sued for unconstitutionally declaring martial law. *Id.* at 387–88. The Court found that it had jurisdiction to provide appropriate relief to injured persons when state officials, acting under state authority, violate constitutional rights. *Id.* at 393. Similarly, this Court has jurisdiction to provide appropriate relief to Ms. Lillianfield because Ava Nathanson, acting as the governor of Ames, violated Ms. Lillianfield's First Amendment rights. To hold otherwise would give the Governor's actions "the quality of a supreme and unchallengeable edict" such that "the fiat of a state Governor, and not the Constitution of the United States, would be the supreme law of the land." *Id.* at 397–98.

Applicant Details

First Name **Tyler**
 Middle Initial **K**
 Last Name **Shappee**
 Citizenship Status **U. S. Citizen**
 Email Address tyshappee@gmail.com

Address
Address
Street
2216 E Ruby Ln
City
Phoenix
State/Territory
Arizona
Zip
85024
Country
United States

Contact Phone
 Number **6027992668**

Applicant Education

BA/BS From **Grand Canyon University**
 Date of BA/BS **May 2016**
 JD/LLB From **Arizona State University College of Law**
http://www.nalplawsonline.org/ndlsdir_search_results.asp?lscd=80302&yr=2011
 Date of JD/LLB **May 6, 2024**
 Class Rank **10%**
 Law Review/
 Journal **Yes**
 Journal(s) **Law Journal for Social Justice**
 Moot Court
 Experience **No**

Bar Admission

Prior Judicial Experience

Judicial
Internships/ **Yes**
Externships
Post-graduate
Judicial Law **No**
Clerk

Specialized Work Experience

Recommenders

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Botello, Ana
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**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

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June 8, 2023

The Honorable Jamar K. Walker
U.S. District Court for the Eastern District of Virginia
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:


I am a second-year student at the Sandra Day O'Connor College of Law at Arizona State University. I wish to apply for a clerkship in your chambers for the 2024-2025 term because I want to work in public service, especially at the federal level, and I know an internship in your chambers would be an invaluable preparation for this type of career. I have moved to Virginia, and I will finish my third year at ASU's satellite campus in DC. Furthermore, I hope to stay and work in Virginia after clerking.

When I applied to law school, I knew I was interested in clerking at the federal level, but I solidified that interest after externing in Judge Rayes' chambers. The externship allowed me to work closely with the judge and the career law clerk and to experience the work of chambers firsthand. After spending a semester in chambers, I know how tightknit the working environment is. This is a rare environment and is exactly what I want to be a part of.

I believe that I am the right fit for your chambers because I have the skills and experiences necessary to meaningfully contribute from the start. In Judge Rayes' chambers I wrote bench memoranda for civil cases on topics including personal jurisdiction, choice of law, and arbitration. I had a semester to receive and implement federal district court specific constructive feedback that would allow me to produce high quality work more easily. In addition, I drafted multiple complex sentencing memorandums while at the Federal Public Defender's Office. By the time of the clerkship, I will have had experiences working in two federal executive departments. Lastly, in addition to my legal internships, I have five years of professional work experience leading students and managing employees that I believe have prepared me to be a mature and professional addition to chambers.

You will be receiving letters of reference on my behalf from Professors Justin Weinstein-Tull and Jessica Berch, as well as from Ana Botello, my supervising attorney at the Federal Public Defender's Office. I am available for an interview at your convenience. Thank you for your time and consideration.

Respectfully,



Tyler Shappee

Tyler Shappee

2741 S. Buchanan St. | Arlington, VA 22206 | (602) 799-2668 | tshappee@asu.edu

EDUCATION

Sandra Day O'Connor College of Law, Arizona State University

Juris Doctor candidate

May 2024

GPA: 3.90 Rank: Top 10% (20/283)

Honors:

Distinguished Oral Advocate (Legal Advocacy)
Willard H. Pedrick Scholar

Activities:

Articles Editor for the Law Journal For Social Justice
Teaching Assistant for Civil Procedure I (Prof. Berch)
Teaching Assistant for Constitutional Law (Prof. Weinstein-Tull)
International Rule of Law & Security Fellow

Fuller Theological Seminary, Phoenix, AZ

MA, Theology, (44 credits completed)

Aug. 2018 - Dec. 2020

Grand Canyon University, Phoenix, AZ

BA, Christian Studies

May 2016

GPA: 3.97, *summa cum laude*

EXPERIENCE

U.S. Department of Justice, Human Rights & Special Prosecutions, Washington, DC

Fall 2023

Intern

U.S. Department of State, Office of the Legal Adviser, Washington, DC

Summer 2023

Intern

Working for the Office of African and Near Eastern Affairs and the Office of Management.

U.S. District Court for the District of Arizona

Fall 2022

Judicial Extern to the Honorable Douglas L. Rayes

Conducted extensive legal research in order to write draft orders for a motion to compel arbitration and a combined motion to dismiss and for judicial notice.

Federal Public Defender's Office for the District of Arizona, Trial Unit

Summer 2022

Intern

Drafted multiple sentencing memorandums and a motion for early termination of supervised release with minimal edits. Participated in client interviews, federal hearings, trial preparation, and trial.

Brilliance LED, Phoenix, AZ

June 2017 - Aug. 2021

Operations Manager

Oversaw all facets of daily operations. Developed and implemented processes company-wide. Provided extensive communication with customers and vendors through email and phone.

Paradise Valley Unified School District, Pinnacle High School, Phoenix, AZ

Aug. 2016 - May 2017

Spanish Teacher

Instructed, assessed, and managed roster of 180 students for Spanish 1-2 and 3-4.

OTHER SKILLS/ACTIVITIES

Basic proficiency in Spanish, international traveler, dog lover, fan of Marvel comics & movies, history and world religions buff

Arizona State University

Unofficial Transcript

Page 1 of 1

Name: Tyler Kyle Shappee
Student ID: 1205874159

Print Date: 06/04/2023
External Degrees
Grand Canyon University
Bachelor of Science 04/01/2016

Beginning of Undergraduate Record

Print Date: 06/04/2023
External Degrees
Grand Canyon University
Bachelor of Science 04/01/2016

Beginning of Law Record

2021 Fall

Course	Description	Attempted	Earned	Grade	Points
LAW 515	Contracts	4.000	4.000	A	16.000
LAW 517	Torts	4.000	4.000	A	16.000
LAW 518	Civil Procedure	4.000	4.000	A	16.000
LAW 519	Legal Method and Writing	3.000	3.000	B+	9.999
		Attempted	Earned		Points
Term GPA:	3.87	Term Totals	15.000	15.000	57.999
Cum GPA:	3.87	Cum Totals	15.000	15.000	57.999

2022 Spring

Course	Description	Attempted	Earned	Grade	Points
LAW 516	Criminal Law	3.000	3.000	A-	11.001
LAW 522	Constitutional Law	3.000	3.000	A+	12.999
LAW 523	Property	4.000	4.000	A	16.000
LAW 524	Legal Advocacy	2.000	2.000	A	8.000
LAW 638	Professional Responsibility	3.000	3.000	A-	11.001
		Attempted	Earned		Points
Term GPA:	3.93	Term Totals	15.000	15.000	59.001
Cum GPA:	3.90	Cum Totals	30.000	30.000	117.000

2022 Fall

Course	Description	Attempted	Earned	Grade	Points
LAW 605	Evidence	3.000	3.000	A	12.000
LAW 615	Public International Law	3.000	3.000	B+	9.999
LAW 623	Fourteenth Amendment	3.000	3.000	A+	12.999
LAW 735	Teaching Assistant	2.000	2.000	P	0.000
LAW 785	Externship	3.000	3.000	P	0.000
		Attempted	Earned		Points
Term GPA:	3.89	Term Totals	14.000	14.000	34.998
Cum GPA:	3.90	Cum Totals	44.000	44.000	151.998

2023 Spring

Course	Description	Attempted	Earned	Grade	Points
LAW 604	Criminal Procedure	3.000	3.000	A	12.000
LAW 609	Administrative Law	3.000	3.000	A	12.000
LAW 691	Seminar	2.000	2.000	A-	7.334
Course Topic:	Congress and the Courts				
LAW 691	Seminar	2.000	2.000	P	0.000
Course Topic:	North American Trade Law				
LAW 735	Teaching Assistant	2.000	2.000	P	0.000
LAW 791	Seminar	3.000	3.000	B+	9.999
Course Topic:	Int'l Law of Armed Conflict				

Term GPA:	3.76	Term Totals	15.000	15.000	41.333
Cum GPA:	3.87	Cum Totals	59.000	59.000	193.331

2023 Fall

Course	Description	Attempted	Earned	Grade	Points
LAW 601	Antitrust Law	3.000	0.000	NR	0.000
LAW 641	Foreign Relations Law	2.000	0.000	NR	0.000
LAW 691	Seminar	2.000	0.000	NR	0.000
Course Topic:	Comp Constitutions and Rights				
LAW 706	Immigration Law	3.000	0.000	NR	0.000
LAW 768	Intl Business Transactions	3.000	0.000	NR	0.000
LAW 791	Seminar	3.000	0.000	NR	0.000
Course Topic:	US and Int'l Election Law				

Term GPA:	0.00	Term Totals	0.000	0.000	0.000
Cum GPA:	3.87	Cum Totals	59.000	59.000	193.331

END OF TRANSCRIPT

Date: 8/19/2016

Grand Canyon University

Page 1 of 3

Unofficial Transcript

3300 West Camelback Road
Phoenix, AZ 85017-3030

www.gcu.edu

Student: Tyler K Shappee						Student ID: 20142467		DOB:		Original Start Date : 8/26/2013		Student GPA: 3.93	
Course Code	Course Description	Credits Attempted	Credits Earned	Grade	Quality Points	Course Code	Course Description	Credits Attempted	Credits Earned	Grade	Quality Points		
Program: Bachelor of Arts in Christian Studies						Term: 2013FALL		2013 Fall Semester		8/26/2013		12/15/2013	
Enrollment #: SH13017861		Status: Transferred To Other				BIB-104	Old Testament Historical Perspectives	4.00	4.00	A	16.00		
Start Date: 8/26/2013		LDA: 9/14/2014				BIB-105	New Testament Historical Perspectives	4.00	4.00	A	16.00		
Term: *TRANSFER		Transfer				MAT-134	Applications of Algebra	4.00	4.00	A-	14.80		
Transferred from: AP SCORES , PRINCETON NJ 08541, United States						UNV-106HON	A Ripple in the Pond: From Idea to Impact	4.00	4.00	A	16.00		
						UNV-115#	University Chapel Service	0.50	0.50	CR	0.00	R*	
								16.50	16.50		62.80		
						Term GPA: 3.93	Cum GPA: 3.93						
						Term: 2014SPRING		2014 Spring Semester		1/6/2014		4/27/2014	
						BIB-354	Jesus and His Interpreters	4.00	4.00	A	16.00		
						BIB-355	Biblical Interpretation and Application	4.00	4.00	A	16.00		
						CWV-106HN	Christianity: Story, Theology and Mission	4.00	4.00	A	16.00		
						HON-106#	Freshman Symposium on Ethics: Culture, Perception, and Action	0.00	0.00	CR	0.00		
						SPA-214	Intermediate Spanish I	4.00	4.00	A	16.00		
								16.00	16.00		64.00		
						Term GPA: 4.00	Cum GPA: 3.96						
Term: N/A													
Transferred from: AP SCORES , PRINCETON NJ 08541, United States													
ECN-299T	Economics Transfer	3.00	3.00	TR	0.00								
		24.00	24.00		0.00								
Term GPA: 0.00		Cum GPA: 0.00											

** Indicates Retaken Course
R* Indicates Retaken Override

Unofficial Transcript

Indicates Pass/Fail Course
♦ Indicates Associated Course

Date: 8/19/2016

Grand Canyon University

Page 2 of 3

Unofficial Transcript

3300 West Camelback Road
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www.gcu.edu

Student: Tyler K Shappee						Student ID: 20142467		DOB:		Original Start Date : 8/26/2013		Student GPA: 3.93		
Course Code	Course Description	Credits Attempted	Credits Earned	Grade	Quality Points	Course Code	Course Description	Credits Attempted	Credits Earned	Grade	Quality Points			
Term: 2014FALL	2014 Fall Semester	8/25/2014		12/14/2014		♦ HIS-299T	History Transfer	6.00	6.00	TR	0.00			
BIB-351	Moses and the Prophets	4.00	4.00	A	16.00	♦ SPA-104	Elementary Spanish I	4.00	4.00	TR	0.00			
HTH-379HN	History of Christianity	4.00	4.00	A	16.00	♦ SPA-105	Elementary Spanish II	4.00	4.00	TR	0.00			
INT-244	World Religions	4.00	4.00	A	16.00	Transferred from: PARADISE VALLEY COMMUNITY COLLEGE Admissions & Records; 18401 N. 32nd Street, Phoenix AZ 85032, United States								
PHI-103	Introduction to Philosophy and Ethics	4.00	4.00	A-	14.80									
UNV-115#	University Chapel Service	0.50	0.50	CR	0.00								R*	
		16.50	16.50	62.80		♦ ENG-105	English Composition I	3.00	3.00	TR	0.00			
						♦ ENG-106	English Composition II	3.00	3.00	TR	0.00			
								3.00	3.00			0.00		
Term GPA: 3.93		Cum GPA: 3.95				Term GPA: 0.00		Cum GPA: 0.00						
Bachelor of Arts in Christian Studies						GPA: 3.95		76.00		76.00				
Concentration(s): Honors College - Christian Studies; Spanish - Minor														
Program: Bachelor of Arts in Christian Studies with an Emphasis in Biblical Studies														
Enrollment #: SH14091640						Status: Graduated								
Start Date: 8/26/2013						Grad Date: 4/24/2016								
Term: *TRANSFER	Transfer					Term: 2015SPRING	2015 Spring Semester	1/5/2015		4/26/2015				
Transferred from: AP SCORES , PRINCETON NJ 08541, United States						BIB-365	Old Testament Writings	4.00	4.00	A	16.00			
						BIB-455	Hebrew Prophets	4.00	4.00	A	16.00			
						HTH-359	Systematic Theology	4.00	4.00	A	16.00			
						PHI-305	Ethical Thinking in the Liberal Arts	4.00	4.00	A	16.00			
						UNV-115#	University Chapel Service	0.00	0.00	U	0.00	R*		
		16.00	16.00	64.00		Term GPA: 4.00		Cum GPA: 3.96						
ECN-299T	Economics Transfer	3.00	3.00	TR	0.00									
		3.00	3.00	0.00										
Term GPA: 0.00		Cum GPA: 0.00												
Term: N/A														
Transferred from: AP SCORES , PRINCETON NJ 08541, United States														
♦ HIS-221	Themes in United States History	4.00	4.00	TR	0.00									

** Indicates Retaken Course
R* Indicates Retaken Override

Unofficial Transcript

Indicates Pass/Fail Course
♦ Indicates Associated Course

Date: 8/19/2016

Grand Canyon University

Page 3 of 3

Unofficial Transcript

3300 West Camelback Road
Phoenix, AZ 85017-3030

www.gcu.edu

Student: Tyler K Shappee						Student ID: 20142467		DOB:		Original Start Date : 8/26/2013		Student GPA: 3.93	
Course Code	Course Description	Credits Attempted	Credits Earned	Grade	Quality Points	Course Code	Course Description	Credits Attempted	Credits Earned	Grade	Quality Points		
Term: 2015FALL		2015 Fall Semester		8/24/2015		12/13/2015							
BIB-370	Hebrew Poetical and Wisdom Literature	4.00	4.00	A	16.00								
BIB-380	Pauline Epistles	4.00	4.00	A	16.00								
HTH-469	Contemporary Theology	4.00	4.00	A	16.00								
MIN-350	Spiritual Formation for Christian Leaders	4.00	4.00	A	16.00								
UNV-115#	University Chapel Service	0.00	0.00	U	0.00	R*							
		16.00	16.00	64.00									
Term GPA: 4.00		Cum GPA: 3.97											
Term: 2016SPRING		2016 Spring Semester		1/4/2016		4/24/2016							
BIB-465	The General Epistles	4.00	4.00	A	16.00								
BIB-475	Johannine Literature	4.00	4.00	A	16.00								
CHL-465	Christian Leadership in the 21st Century	4.00	4.00	B	12.00								
		12.00	12.00	44.00									
Term GPA: 3.67		Cum GPA: 3.93											
Bachelor of Arts in Christian Studies with an Emphasis in Biblical Studies		GPA: 3.93		120.00		120.00							
Honors: Summa Cum Laude Academic Honors													
Credentials awarded for Bachelor of Arts in Christian Studies with an Emphasis in Biblical Studies v11 enrollment													
Credential		Date Awarded		Date Cleared									
Bachelor of Arts		4/24/2016		4/24/2016									
*** End of Transcript ***													

** Indicates Retaken Course
R* Indicates Retaken Override

Unofficial Transcript

Indicates Pass/Fail Course
♦ Indicates Associated Course

June 13, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend Tyler Shappee, a rising 3L at the Sandra Day O'Connor College of Law, for a clerkship in your chambers. I do so with the greatest enthusiasm and without any reservation. Tyler is a brilliant and responsible student who is a pleasure to work with. He has been a very, very top student of mine (receiving two A+'s) through two challenging courses, and he has been a TA for me as well. He is in the top 10% of his class. He will be a stellar clerk, and any judge who hires him will be thrilled that they did.

By way of context, Tyler was a student in both my Constitutional Law and Fourteenth Amendment classes. Constitutional Law is a required 1L course that covers the fundamentals of constitutional interpretation as well as the principles, doctrines, and theories of federalism and the separation of powers. In studying federalism, we cover Congress's authority to enact legislation pursuant to its Commerce, Tax, and Spending powers, as well as restrictions on federal control of states. In studying the separation of powers, we cover the appointment and removal powers, the executive's power of the sword, among other things.

Fourteenth Amendment is an upper-level course where students learn the law of the Equal Protection and Due Process Clauses. We begin with the passage of the Amendment after the Civil War and proceed through the legal decisions and social movements that interpreted it and brought it to life. Students learn the law of race and sex discrimination, the law of privacy (including abortion and marriage equality), and the law governing the enforcement of the Amendment. The course navigates many difficult and sensitive issues, and the students learn to discuss them in informed and rational ways.

Tyler received one of the highest numerical scores in both his Constitutional Law and Fourteenth Amendment classes, receiving an A+ in both. I don't think I've ever had a student get multiple A+'s in my classes. In classes of 80 students, getting an A+ is an extraordinary achievement. It means turning in an exam that is clearly written, well-organized, and substantively perfect. In both classes, Tyler caught everything I threw at him on the final – including both doctrinal and more conceptual questions. Tyler's class participation was also excellent. He was always prepared for class and elevated class discussion when he spoke. Because the topic was constitutional law, it inevitably covered difficult and sensitive issues. Tyler navigated those issues in kind, calm, and rational ways.

Tyler's level-headedness in class is consistent with my own interactions with him outside of class as well. I got to know Tyler as a TA for my Constitutional Law class. He is an extremely responsible student and human being. He is mature, even-tempered, and committed – no surprise, having received an "A" in almost every class he's taken.

I strongly recommend that you hire Tyler.
Please feel free to contact me anytime.
Sincerely,

Justin Weinstein-Tull
(Cell: 541-968-3153)

Justin Weinstein-Tull - justinwt@asu.edu - 480-965-3229

FEDERAL PUBLIC DEFENDER

District of Arizona
850 W. Adams, Suite 201
Phoenix, Arizona 85007

JON M. SANDS
Federal Public Defender

602-382-2700
(Fax) 602-382-2800
1-800-758-7053

June 8, 2023

Dear Judge :

I am providing this letter of recommendation on behalf of Tyler Shappee for a clerkship position in your chambers. I got to know Tyler well as his supervising attorney during his twelve-week internship with our office the summer of 2022. He is the kind of intern I hope for—easy to get along with and produced timely, high-quality work throughout his summer with us.

Tyler is an excellent writer. He approached each new assignment with a positive attitude and intellectual curiosity, and I can confidently say that he would be an asset to any chambers. Though he was presented with novel issues and difficult assignments, he would take the initiative to seek out references and provide in-depth analysis with minimal guidance. He was always eager to receive constructive criticism and returned his edits in a timely manner. Overall, Tyler always delivered impressive work-product. For example, he was tasked with writing a sentencing memorandum for a case where judges typically sentence defendants to lifetime supervised release. Tyler's research and comparison to similarly situated defendants in other districts resulted in a sentence that was below the sentencing guideline recommendation, a true win for our client.

Furthermore, Tyler is mature and a joy to be around, important qualities for the work setting of chambers. I had the opportunity to spend time with Tyler, along with his fellow interns, during walks to court, drives to prison visits, and office gatherings. Tyler can navigate discussing controversial legal topics as well as lighthearted small talk. During visits to our clients in prison, a difficult environment, he handled the new setting easily and was able to show our clients the empathy and attention they deserve.

Finally, Tyler is a true team player and worked well with his fellow interns and the other attorneys in the office. During his time, he successfully worked on both individual and collaborative projects. At the end of the summer the interns provided a presentation that the attorneys could attend for CLE credit. Tyler collaborated with his fellow interns to create and deliver a seamless presentation on recent Ninth Circuit opinions on warrants. Individually, he worked he was assigned a motion for termination of supervised release by another attorney. This motion required him interviewing the client on the telephone alone in order to obtain the appropriate information.

In short, Tyler brings not only a positive attitude each day, but also a quality of work that I believe would make him an exceptional clerk. I would be happy to answer any questions that you may have.

Sincerely,



Ana Botello, AFD, Law Student Supervisor

June 13, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am pleased to recommend Tyler Shappee for a clerkship position in your chambers. I've come to know Tyler very well because he has taken three courses with me and served as my Teaching Assistant in Civil Procedure I. Tyler will make an excellent law clerk because he is intelligent, hard-working, and personable, as I hope to convince you below.

First, law clerks need to be smart, and Tyler is both smart and competent. He's in the top 10% of his class at the Sandra Day O'Connor College of Law at Arizona State University and has earned strong As from me in both Civil Procedure I and Evidence. (I have every reason to believe he will achieve another high score in the third class, Criminal Procedure, but as I write this it is only March.) I was so impressed with Tyler in Civil Procedure that I invited him to serve as my Teaching Assistant the following year. As a TA, he so impressed me again that—for the first time in 10 years of teaching—I asked if he (and his co-TA) would like to teach a portion of one of my classes on best practices for exam taking. (I am generally quite zealous about my class time and rarely invite guest speakers, so the fact that I offered him this opportunity really speaks volumes about the esteem in which I hold him.) His presentation was top-notch. He gave invaluable essay exam tips such as skipping down to the call of the question, reviewing the relevant law and rules, and then reading the hypothetical with that information in mind while marking the relevant facts. News of this presentation spread around the law school and, although this ultimately fell through because of timing and other administrative issues, another professor in the law school asked if Tyler would be willing to speak with her students as well.

Quite frankly, Tyler is the sort of student I love having in class because he is always on time, prepared, and engaged with the materials. I call on students randomly in all my classes using flashcards that I reshuffle after each class so that students can't guess when their names might rise to the top. Tyler has been in three of my classes: Civil Procedure I (fall 2021), Evidence (fall 2022), and Criminal Procedure (spring 2023). To alleviate some stress, I allow students to "pass" once each semester. Tyler has never used a pass in any class. To the contrary, he always provides thoughtful and rigorous answers. I don't recall many specifics about my classroom interactions with most students—I teach about 150-200 students each semester and call on 10-20 each class period—but I do remember calling on him in Evidence to walk through a hypothetical involving Rules 608 and 609 (involving impeaching a witness's character for truthfulness). The questions I posed were nuanced and intended to make the student struggle with difficult concepts, such as what sorts of acts involve truthfulness as opposed to simply wrongfulness and what sorts of convictions fit within Rule 609. Tyler's answers exceeded my expectations.

Second, Tyler is a diligent and hardworking student. This past year, for example, he worked as my TA, took a full course load, externed for the Honorable Judge Douglas L. Rayes (Arizona District Court), and served on the Law Journal for Social Justice. He did all of this while still engaging fully with all his classes and even attending extra events, such as the federal Evidence Advisory Committee's fall meeting hosted by ASU Law School. In sum, I have confidence that Tyler can handle being pulled in many different directions and having multiple, overlapping obligations.

Finally, you'll enjoy having Tyler in your chambers. I look for normalcy, calmness, and compassion in my TAs because they often serve as my first line of defense when first semester 1Ls start spinning out because of the stress. Tyler exemplifies all those traits—and that is one of the many reasons I selected him as a TA. He is easy to get along with, and I'm sure he will be an asset in the close confines of chambers.

I hope I have shown why Tyler will be a great clerk. He is smart, hardworking, and pleasant. If you would like to speak with me about Tyler's candidacy, please don't hesitate to call me on my cell phone (602-402-6474) or reach out to me by email (jessica.berch@asu.edu).

Sincerely,

Jessica Berch
Senior Lecturer
Sandra Day O'Connor College of Law
Arizona State University

Jessica Berch - Jessica.Berch@asu.edu

Writing Sample

The following is a draft order on a motion to dismiss that I wrote while externing for Judge Rayes in the Fall of 2022. The sample reflects my own work, and the sample is being provided with permission from chambers. At chambers request, party names, case numbers, and other case-identifying information have been replaced with fictitious alternatives.

1 **WO**

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5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 eConnect Incorporated and Jason Thompson,

10 Plaintiffs,

11 v.

12 Christopher Thompson CPA Incorporated,

13 Defendant.
14

No. CV-22-00ABC-PHX-DLR

ORDER

15
16 Before the Court are Defendant Christopher Thompson CPA Incorporated's motion
17 to dismiss for lack of personal jurisdiction and failure to state a claim, (Doc. 20), and
18 accompanying motion for judicial notice, (Doc. 21.) The motions are fully briefed. (Docs.
19 26, 27, 30, 31.) For the following reasons, Defendant's motion to dismiss is denied and the
20 motion for judicial notice is granted.¹

21 **I. Background**

22 Plaintiff Jason Thompson ("Jason") is an Arizona resident and Plaintiff eConnect
23 Incorporated ("eConnect") is an Arizona corporation. (Doc. 15 ¶¶ 1-2.) Jason is an officer,
24 director, and shareholder of eConnect. (*Id.* ¶ 8.) Around 2008, eConnect developed and
25 maintained proprietary software to help homeowners' associations collect delinquent dues
26 and assessments. (*Id.* ¶ 13.) Later, Jason created iLogistics, LLC ("iLogistics") and is a

27
28 ¹ Plaintiffs' request for oral argument is denied because the issues are adequately briefed
and oral argument will not assist the Court in resolving the pending motion. *See* Fed. R.
Civ. P. 78(b); LRCiv. 7.2(f).

1 member along with non-party Chester Moller. (*Id.* ¶¶ 9-10.) eConnect owned the software
2 but licensed it to iLogistics. (*Id.* ¶¶ 14-15.)

3 Defendant is an Ohio corporation. (*Id.* ¶ 3.) From 2009 to 2017, Defendant provided
4 tax services for iLogistics and Plaintiffs. (*Id.* ¶ 18.) Jason's now-deceased father,
5 Christopher Thompson ("Christopher"), was Defendant's sole shareholder, director, and
6 officer, and he performed the accounting services from Ohio free of charge. (*Id.* ¶¶ 21, 26.)
7 Unknown to Plaintiffs, in 2012 Defendant began capitalizing the development costs for
8 eConnect's software on iLogistic's tax returns, which made the software an asset of
9 iLogistics. (*Id.* ¶¶ 36-37.)

10 In 2016, Moller sued Jason in Arizona state court and used the tax returns prepared
11 by Defendant to prove that iLogistics, not eConnect, owned the software. (*Id.* ¶¶ 38-39.)
12 During that lawsuit, Christopher was deposed and admitted to erroneously capitalizing the
13 software to iLogistics. (*Id.* ¶¶ 41-43.) Plaintiffs then settled with Moller in January 2020
14 for more than \$2,000,000. (*Id.* ¶ 52.) Now, Plaintiffs bring claims against Defendant,
15 seeking to hold it vicariously liable for Christopher's breach of fiduciary duty (*Id.* ¶¶ 56-
16 60) and accounting malpractice (*Id.* ¶¶ 61-68).

17 **II. Judicial Notice**

18 Defendant requests the Court to take judicial notice of four exhibits (Docs. 20-2,
19 20-3, 20-5, 20-6.) It asserts that the exhibits are filings from the prior underlying suit and
20 a government issued death certificate. Plaintiffs only object to the judicial notice of Doc.
21 20-5 because they dispute the facts and conclusions contained within. The Court may take
22 judicial notice of public records without converting a motion to dismiss into one for
23 summary judgment. *Lee v. City of L.A.*, 250 F.3d 668, 689 (9th Cir. 2001). However, the
24 Court may not take judicial notice of a fact that is subject to reasonable dispute. *Id.*; Fed.
25 R. Evid. 201. Therefore the Court will take judicial notice of all four exhibits.

26 The one document that Plaintiffs contest consists of factual findings of the
27 Receiver's Report. The Court will take judicial notice of the existence of the report because
28 it is beyond reasonable dispute that the report was issued and contained these factual

1 findings. To the extent Plaintiffs reasonably dispute the truth or validity of the factual
 2 findings in the order, the Court judicially notices only the fact that the report was issued
 3 and contained certain findings and conclusions. The Court does not take as true the findings
 4 and conclusions contained therein.

5 **III. Personal Jurisdiction**

6 **A. Legal Standard**

7 Under Federal Rule of Civil Procedure 12(b)(2), a party may move to dismiss claims
 8 against it for lack of personal jurisdiction. In opposing a defendant's motion to dismiss for
 9 lack of personal jurisdiction, the plaintiff bears the burden of establishing jurisdiction is
 10 proper. *Picot v. Weston*, 780 F.3d 1206, 1211 (9th Cir. 2015). "Where, as here, a
 11 defendant's motion to dismiss is based on a written record and no evidentiary hearing is
 12 held, the plaintiff need only make a prima facie showing of jurisdictional facts." *Id.*
 13 (internal quotations and citation omitted). Although a plaintiff cannot "simply rest on the
 14 bare allegations of its complaint," *Amba Mktg. Sys., Inc. v. Jobar Int'l, Inc.*, 551 F.2d 784,
 15 787 (9th Cir. 1977), uncontroverted allegations in the complaint must be taken as true and
 16 any conflicts between parties over statements contained in affidavits must be resolved in
 17 the plaintiff's favor, *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th
 18 Cir. 2004).

19 **B. Analysis**

20 "Where, as here, there is no applicable federal statute governing personal
 21 jurisdiction, the district court applies the law of the state in which the district court sits."
 22 *Id.* Arizona's long-arm statute allows Arizona courts to exercise personal jurisdiction to
 23 the maximum extent permitted under the Due Process Clause of the United States
 24 Constitution. *See* Ariz. R. Civ. P. 4.2(a); *A. Uberti and C. v. Leonardo*, 892 P.2d 1354,
 25 1358 (Ariz. 1995). Due process requires that the defendant "have certain minimum
 26 contacts" with the forum state "such that the maintenance of the suit does not offend
 27 traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. State of Wash.*,
 28 *Office of Unemployment Compensation and Placement*, 326 U.S. 310, 316 (1945) (internal

1 quotations and citation omitted).

2 “Depending on the strength of those contacts, there are two forms that personal
3 jurisdiction may take: general and specific.” *Picot*, 780 F.3d at 1211. General personal
4 jurisdiction over a nonresident defendant requires “continuous corporate operations within
5 a state so substantial and of such a nature as to justify suit against it on causes of action
6 arising from dealings entirely distinct from those activities.” *Int’l Shoe Co.*, 326 U.S. at
7 318. Conversely, specific personal jurisdiction exists when a lawsuit arises out of, or is
8 related to, the defendant’s contacts with the forum. *Helicopteros Nacionales de Colo., S.A.*
9 *v. Hall*, 466 U.S. 408, 414 n.8 (1984). Plaintiffs argue only for specific personal
10 jurisdiction.

11 To establish specific personal jurisdiction, a plaintiff must show: (1) the nonresident
12 defendant purposefully directed² his activities at the forum, (2) the claim arises out of the
13 defendant’s forum-related activities, and (3) the exercise of jurisdiction is reasonable.
14 *Schwarzenegger*, 374 F.3d at 802. The plaintiff bears the burden on the first two prongs
15 and a failure to satisfy either of these prongs means that personal jurisdiction is not
16 established in the forum state. *Id.* But “[i]f the plaintiff succeeds in satisfying both of the
17 first two prongs, the burden then shifts to the defendant to present a compelling case that
18 the exercise of jurisdiction would not be reasonable.” *Id.* (internal quotations and citation
19 omitted). Specific personal jurisdiction over Defendant is proper because Plaintiffs have
20 satisfied the first two prongs and Defendant has not demonstrated that the Court’s exercise
21 of jurisdiction would be unreasonable.

22 1. Purposeful Direction

23 Purposeful direction requires the defendant to have “(1) committed an intentional
24 act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is
25 likely to be suffered in the forum state.” *Morrill v. Scott Fin. Corp.*, 873 F.3d 1136, 1142
26 (9th Cir. 2017). “[R]andom, fortuitous, or attenuated contacts are insufficient to create the
27 requisite connection with the forum.” *Id.* (internal quotations and citation omitted). But

28 ² For claims sounding in tort, as Plaintiffs’ do, courts apply the purposeful direction test.
Morrill v. Scott Fin. Corp., 873 F.3d 1136, 1142 (9th Cir. 2017).

actions may still be directed at the forum state even if they occurred elsewhere. *Id.*

Defendant purposely directed its activities at Arizona. First, Defendant committed an intentional act when it performed tax services for Plaintiffs, specifically filing their state tax returns. Multiple district courts have held that performing accounting services and filing tax returns satisfies the intentional act prong of the purposeful direction test. *See, e.g., Forty Niner Truck Plaza, Inc. v. Shank*, No. CIV. S-11-0860-FCD/DAD, 2011 WL 2710400, at *5 (E.D. Cal. July 11, 2011); *Wang v. Kahn*, No. 20-CV-08033-LHK, 2022 WL 36105, at *17 (N.D. Cal. Jan. 4, 2022). Second, Defendant expressly aimed its intentional acts at Arizona by filing Plaintiffs' state taxes here. Lastly, Plaintiffs are Arizona residents, so Defendant should have known that the harm from its alleged negligence would be suffered primarily in Arizona.

2. Claims Arise Out of Forum-Related Activities

Plaintiffs' claims arise out of Defendant's contacts with Arizona. A claim arises out of a defendant's contacts with the forum when the claim would not have arisen "but for" the defendant's actions directed toward the forum state. *Panavision Int'l v. Toeppen*, 141 F.3d 1316, 1322 (9th Cir. 1998). Here, Defendant's contacts with Arizona consist, in part, of tax services performed for Plaintiffs and iLogistics and the alleged negligence occurred while performing these tax services. But for Defendant filing taxes in Arizona on behalf of Plaintiffs and iLogistics, Plaintiffs would not have suffered the harm alleged.

3. Reasonableness of Exercising Jurisdiction

Because Defendant purposely directed its actions at this forum and Plaintiffs' claims arise out of those forum-related contacts, the Court may exercise specific personal jurisdiction unless Defendant demonstrates that it would be unreasonable to do so. In evaluating the reasonableness of exercising jurisdiction, the Court applies a seven-factor balancing test that weighs:

(1) the extent of the defendant's purposeful interjection into the forum state's affairs; (2) the burden on the defendant of defending in the forum; (3) the extent of conflict with the sovereignty of the defendant's state; (4) the forum state's interest in adjudicating the dispute; (5) the most efficient judicial resolution of the controversy; (6) the importance of the

forum to the plaintiff's interest in convenient and effective relief; and (7) the existence of an alternative forum.

Freestream Aircraft (Bermuda) Ltd. v. Aero Law Grp., 905 F.3d 597, 607 (9th Cir. 2018).

On balance, these factors do not weigh against the exercise of personal jurisdiction. First, although Defendant is and always has been an Ohio corporation that mainly provides services in Ohio, Defendant purposefully interjected itself into Arizona's affairs by providing tax filing services in Arizona for Arizona residents. Second, though litigating this matter might be relatively more burdensome for Defendant than litigating in Ohio, "[u]nless such inconvenience is so great as to constitute a deprivation of due process, [this factor] will not overcome clear justifications for the exercise of jurisdiction." *Roth v. Garcia Marquez*, 942 F.2d 617, 623 (9th Cir. 1991) (internal quotations and citation omitted). Defendant has not shown that the inconvenience of litigating in Arizona rises to this level. Third, Defendant has not persuaded the Court that exercising personal jurisdiction will conflict to any significant extent with Ohio's sovereign interest (if any) in the matter. Fourth, Arizona has a strong interest in adjudicating this action because states have a "manifest interest in providing an effective means of reparation for its residents tortiously injured by others." *Lake v. Lake*, 817 F.2d 1416, 1423 (9th Cir. 1987). Fifth, Arizona is the best locale to ensure efficient judicial resolution of the controversy; both Plaintiffs, most witnesses, and records relating to the claims are located in Arizona. (Doc. 26 at 9.) Sixth, Plaintiffs have a strong interest in litigating in their home state of Arizona, which provides Plaintiffs an avenue to potentially recover for the claims raised. Finally, the seventh factor is relevant only following a showing that the forum state is an unreasonable forum, a showing Defendant has not made based on the first six factors. *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1080 (9th Cir. 2011). Because Defendant has not made a compelling case that exercising jurisdiction would be unreasonable, the Court finds that it has specific personal jurisdiction over Defendant.

IV. Failure to State a Claim

A. Legal Standard

When analyzing a complaint for failure to state a claim for relief under Federal Rule of Civil Procedure 12(b)(6), the well-pled factual allegations are taken as true and construed in the light most favorable to the nonmoving party. *Cousins v. Lockyer*, 568 F.3d 1063, 1067 (9th Cir. 2009). Legal conclusions couched as factual allegations are not entitled to the assumption of truth, *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009), and therefore are insufficient to defeat a motion to dismiss for failure to state a claim, *In re Cutera Sec. Litig.*, 610 F.3d 1103, 1108 (9th Cir. 2010). To avoid dismissal, the complaint must plead sufficient facts to state a claim to relief that is plausible on its face. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). This plausibility standard “is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 556).

B. Analysis

Defendant argues that Plaintiffs fail to state a claim for two reasons: (1) the claims are time-barred and (2) a principal cannot be held vicariously liable for the torts of its agent unless the agent is joined as a defendant, something Plaintiffs did not do.

1. Statute of Limitations

As a preliminary matter, however, the parties disagree over which state’s law applies. Defendant argues that Ohio law applies, while Plaintiffs argue for Arizona law. Under Ohio law, these claims have a four-year statute of limitations, OHIO REV. CODE ANN. § 2305.09(D) (West 2014), and there is no application of the discovery rule, *Investors REIT One v. Jacobs*, 546 N.E.2d 206, 211 (Ohio 1989). Under Arizona law, there is a two-year statute of limitations, *CDT, Inc. v. Addison, Roberts & Ludwig, C.P.A., P.C.*, 7 P.3d 979, 981-82 (Ariz. Ct. App. 2000), and an application of the discovery rule, *Gust, Rosenfeld & Henderson v. Prudential Life Ins. Co. of Am.*, 898 P.2d 964, 966 (Ariz. 1995). This issue is important to resolve because the outcome is different under Ohio and Arizona law.

A federal court sitting in diversity applies the forum state’s choice-of-law rules. *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941). Arizona uses the Restatement (Second) of Conflict of Laws (1988) to determine the controlling law for

1 statutes of limitations. *Jackson v. Chandler*, 61 P.3d 17, 19 (Ariz. 2003).

2 Whether a claim will be maintained against the defense of the
3 statute of limitations is determined under the principles stated
4 in § 6. In general, unless the exceptional circumstances of the
5 case make such a result unreasonable:

6 (1) The forum will apply its own statute of limitations barring
7 the claim.

8 (2) The forum will apply its own statute of limitations
9 permitting the claim unless:

10 (a) maintenance of the claim would serve no substantial
11 interest of the forum; and

12 (b) the claim would be barred under the statute of limitations
13 of a state having a more significant relationship to the
14 parties and the occurrence.

15 Restatement § 142 (1988); *Jackson*, 61 P.3d at 19. “The general rule is very clear: as a
16 starting point, the forum’s statute of limitations applies.” *Id.* (internal quotations and
17 citation omitted). The claims would be timed barred in Ohio but not in Arizona. Therefore,
18 because Arizona is the forum and it would permit the claim, it will be permitted unless the
19 Court determines Arizona has no substantial interest in the action. The injury occurred in
20 Arizona and Arizona has a significant interest in deterring wrongful conduct. *Id.* at 21.
21 Arizona has a substantial interest in permitting the present action in this forum especially
22 because Plaintiffs are Arizona residents. Because Arizona is the forum and has a substantial
23 interest, its law applies to determine if Plaintiffs’ claims are time-barred.

24 Statutes of limitations “identify the outer limits of the period of time within which
25 an action may be brought to seek redress or to otherwise enforce legal rights created by the
26 legislature or at common law.” *Porter v. Spader*, 239 P.3d 743, 746 (Ariz. Ct. App. 2010).
27 They serve primarily “to protect defendants and courts from stale claims where plaintiffs
28 have slept on their rights *Gust*, 898 P.2d at 964, and also protect defendants from insecurity,
Porter, 239 P.3d at 746. But “[o]ne does not sleep on his or her rights with respect to an
unknown cause of action.” *Doe v. Roe*, 955 P.2d 951, 960 (Ariz. 1998). Accordingly,
Arizona applies the “discovery rule” to determine a claim’s accrual date. *Gust*, 898 P.2d at
966. “Under the ‘discovery rule,’ a plaintiff’s cause of action does not accrue until the

1 plaintiff knows or, in the exercise of reasonable diligence, should know the facts underlying
2 the cause.” *Id.*

3 In professional malpractice cases, a cause of action does not accrue until the plaintiff
4 discovers the negligence and sustains ascertainable harm as a result of that negligence.
5 *CDT, Inc.*, 7 P.3d at 982 (internal quotations and citation omitted). “[N]egligence that
6 results in no immediate harm or damage delays accrual of the cause of action until such
7 damage is sustained.” *Id.* at 982 (internal quotations and citation omitted). The damage
8 must be “more than merely the threat of future harm.” *Id.* (internal quotations and citation
9 omitted). “Harm is actual and appreciable when it becomes irremediable [or] irrevocable.”
10 *Com. Union Ins. Co. v. Lewis and Roca*, 902 P.2d 1354, 1358 (internal quotations and
11 citation omitted).

12 Here, the statute of limitations is two years for these claims. *CDT, Inc.*, 7 P.3d at
13 981-82. Defendant argues that Plaintiffs’ claims are time-barred because Plaintiffs knew
14 or should have known of the alleged negligence more than two years before they filed their
15 complaint in January 2022. Defendant believes that Plaintiffs should have known of the
16 negligence in 2016 when the underlying suit with Moller commenced, or in 2017 when
17 Christopher admitted to erroneously capitalizing the software to iLogistics during his
18 deposition. Plaintiffs respond that, although they were aware of the negligence at those
19 times, their claims did accrue until they settled the underlying suit in January 2020 because
20 that is when they suffered appreciable harm.

21 The Court agrees with Plaintiffs. Although Plaintiffs knew or should have known
22 of the negligence by 2017 at the latest, Plaintiffs had not suffered appreciable harm at that
23 time. Before Plaintiffs settled the underlying suit, any potential harm caused by
24 Defendant’s alleged negligence was not irremediable or irrevocable. For example, the
25 underlying suit could have been voluntarily dismissed or resolved in Plaintiffs’ favor. The
26 mere possibility of harm resulting from Defendant’s alleged negligence was not enough to
27 start the limitations clock.³ Because Plaintiffs did not suffer appreciable, non-speculative

28 ³ Defendant counters that Plaintiffs suffered appreciable harm in 2016 when they
hired an attorney to defend the underlying suit. But Arizona caselaw appears to reject this

harm until January 2020, their claims are timely.

2. Vicarious Liability

Defendant argues that in order to hold a principal vicariously liable for the acts of an agent, the agent must be joined as a party to the suit—something Plaintiffs did not do. Again, the parties disagree over which states’ law applies. However, for this issue the choice of law is moot because the result is the same under both Ohio and Arizona law. In order to hold a principal vicariously liable for the torts of an agent, a plaintiff must prove that the agent was negligent, but it is not necessary to name the agent as a defendant. *Huffman v. American Family Mut. Ins. Co.*, 2011 WL 814957, at *2 (D. Ariz. 2011); *Natl. Union Fire Ins. Co. of Pittsburgh, PA v. Wuerth*, 913 N.E.2d 939, 944 (Ohio 2009); *see also McClure v. Country Life Ins. Co.*, 326 F. Supp. 3d 934, 948 (D. Ariz. 2018) (noting that the entire case against the employer was premised on vicarious liability, even though the individual employees who engaged in the malfeasance were not named as defendants); Accordingly, although Plaintiffs will need to establish Christopher’s negligence in order to prove their case against Defendant, their failure to join him (or, more accurately, his estate) as a defendant does not warrant dismissal under Arizona or Ohio law.⁴

IT IS ORDERED that Defendant’s motion to dismiss (Doc. 20) is **DENIED** and that Defendant’s motion for judicial notice (Doc. 20) is **GRANTED**.

view. *See Myers v. Wood*, 850 P.2d 672 (Ariz. Ct. App. 1992) (holding that deciding not to bring an earlier \$1,000 claim for attorney fees did not bar a later \$400,000 malpractice claim); *Enterprising Sol., Inc. v. Ellis*, No. 1 CA-CV 14-0355, 2015 WL 4748020 (Ariz. Ct. App. 2015 Aug. 11, 2015) (following the holding of *Myers* under comparable circumstances).

⁴ Courts should resolve tort issues under the law of the state having the most significant relationship to both the occurrence and the parties with respect to any issue. Restatement § 145(1). Relevant considerations include “(1) the place where the injury occurred, (2) the place where the conduct causing the injury occurred, (3) the domicile, residence, nationality, place of incorporation and place of business of the parties, (4) the place where the relationship, if any, between the parties is centered.” *Id.* § 145(2). Ultimately, “[t]hese contacts are to be evaluated according to their *relative importance* with respect to the particular issue.” *Id.* (emphasis added).

In this case, the factors are evenly divided between Arizona and Ohio. Therefore, the Court is unable to determine which factors to weigh more importantly because there was not adequate attention on the “relative importance” of these factors by the parties. Fortunately, the choice of law issue for the statute of limitations and vicarious liability were resolved on different grounds. Therefore, nothing in this order resolves the choice of law issue in regard to the merits of this case.

Applicant Details

First Name	Shawn
Middle Initial	A
Last Name	Shariati
Citizenship Status	U. S. Citizen
Email Address	ss4140@columbia.edu
Address	<div> Address Street 652 Dean Street, Apt. 1 City Brooklyn State/Territory New York Zip 11238 Country United States </div>
Contact Phone Number	516 770 6344

Applicant Education

BA/BS From	City University of New York-Queens College
Date of BA/BS	September 2009
JD/LLB From	Columbia University School of Law http://www.law.columbia.edu
Date of JD/LLB	May 18, 2017
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Columbia Human Rights Law Review
Moot Court Experience	No

Bar Admission

Admission(s)	New York, Washington
--------------	-----------------------------

Prior Judicial Experience

Judicial Internships/ Externships	Yes
Post-graduate Judicial Law Clerk	Yes

Specialized Work Experience

Recommenders

Eisenberg, Adam
adameisenberg@comcast.net

Chess, Faye
judgefayeChess@gmail.com

Covello, Matthew
matthew.covello@kingcounty.gov

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

Shawn Ashkan Shariati
652 Dean Street, Apt. 1
Brooklyn, NY 11238
(516) 770-6344
ss4140@columbia.edu

March 23, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker,

I am a public defender and a 2017 graduate of Columbia Law School, where I was a Harlan Fiske Stone Scholar and a member of the Columbia Human Rights Law Review. I am writing to apply for a 2024-2025 term clerkship following a clerkship with Justice G. Helen Whitener of the Washington State Supreme Court for the 2023-2024 term.

Enclosed please find my resume, transcript, writing sample, and letters of recommendation from:

Supervisor Matthew Covello, (206) 477-8999, Matthew.Covello@kingcounty.gov
Judge Adam Eisenberg, (206) 684-8708, Adam.Eisenberg@seattle.gov
Judge Faye Chess, (206) 684-8712, Faye.Chess@seattle.gov

Should you need any additional information, please do not hesitate to contact me. Thank you for your time and consideration.

Sincerely,

Shawn Ashkan Shariati

Shawn Ashkan Shariati

652 Dean Street, Apt. 1
Brooklyn, NY 11238
(516) 770-6344
ss4140@columbia.edu

EDUCATION

Columbia Law School, New York, NY

J.D., 2017

Harlan Fiske Stone Scholar (for superior academic achievement)

Columbia Human Rights Law Review, *A Jailhouse Lawyer's Manual*

Challenging the Consequences of Mass Incarceration Clinic

Public Defender Students of Columbia Law School, *President*

The London School of Economics, London, UK

MSc., International Relations, 2011

Queens College of the City University of New York, New York, NY

B.A., Political Science and History, *cum laude*, 2009

EXPERIENCE

Washington State Supreme Court, Olympia, WA

Law Clerk to the Honorable G. Helen Whitener, Expected August 2023 – August 2024

The Legal Aid Society, New York, NY

Criminal Defense Practice Attorney, October 2019 – Present

Handled all aspects of criminal litigation, including arraignment, motion practice, trial, and probation hearings. Provided client-centered representation in collaboration with social workers, investigators, paralegals, and civil attorneys.

King County Department of Public Defense, Associated Counsel for the Accused, Seattle, WA

Attorney, August 2017 – August 2019

Handled all aspects of criminal litigation, including arraignment, motion practice, trial, contempt, and probation hearings. Provided client-centered representation in collaboration with social workers, investigators, paralegals, and civil attorneys.

Handled all aspects of civil litigation concerning child support enforcement, at-risk youth, and child in need of services proceedings.

United States District Court for the Southern District of New York, New York, NY

Judicial Extern to the Honorable Valerie Caproni, January 2017 – April 2017

Conducted legal research, prepared memos, and drafted opinions concerning such topics as habeas corpus, sentencing, civil procedure, employment law, and copyright law.

The Bronx Defenders, New York, NY

Criminal Defense Practice Extern, September 2016 – December 2016

Helped attorneys representing clients in criminal proceedings. Prepared motions concerning facial insufficiency, speedy trial, suppression, and prosecutorial misconduct.

Family Defense Practice Intern, August 2016

Assisted attorneys representing clients in dependency proceedings. Prepared motions and memos concerning various sections of New York's Family Court Act.

The Legal Aid Society, New York, NY

Criminal Defense Practice Intern, June 2016 – August 2016

Supported attorneys representing clients in criminal proceedings. Prepared subpoenas. Wrote memos and motions concerning facial insufficiency, severance, speedy trial, and suppression. Represented clients charged with misdemeanors pursuant to New York's student practice order.

Neighborhood Defender Service of Harlem, New York, NY

Criminal Defense Practice Extern, September 2015 – May 2016

Helped attorneys representing clients in criminal proceedings. Represented clients charged with misdemeanors pursuant to New York's student practice order.

Orleans Public Defenders, New Orleans, LA

Law Clerk, May 2015 – August 2015

Assisted attorneys representing clients in criminal proceedings. Prepared various motions and memos concerning suppression and evidentiary rules.

New York Civil Liberties Union, New York, NY

Legal Intake Committee Member, January 2014 – August 2014

Managed the intake of and correspondences with clients. Aided attorneys with class action lawsuits concerning New York's criminal legal system.

Filipino American Legal Defense & Education Fund, New York, NY

Legal Assistant, September 2012 – May 2014

Helped attorneys representing clients with immigration issues. Created and

managed pro bono immigration legal clinics in collaboration with other non-profit organizations and bar associations.

Haitian Family Resource Center, New York, NY

Legal Assistant, July 2012 – September 2012

Assisted attorneys representing clients with immigration issues. Helped prepare community events in collaboration with local churches.

United Nations – Department of Political Affairs, New York, NY

Intern – Office of the Assistant Secretary-General, June 2011 – October 2011

Produced reports on political and security developments around the world.

Managed the intake of correspondences from governments and other UN missions.

Prepared talking points for the Secretary-General during the meeting of the General Assembly.

MEMBERSHIPS

Middle Eastern Legal Association of Washington, *Vice President, 2018-2019*

BAR ADMISSIONS

Washington

New York

COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK

NAME: Shawn Ashkan Shariati
 SSN#: XXX-XX-2203
 SCHOOL: SCHOOL OF LAW

DEGREE(S) AWARDED: Juris Doctor (Doctor of Law) DATE AWARDED: May 17, 2017 PROGRAM: LAM

SUBJECT COURSE TITLE NUMBER	POINTS	GRADE	SUBJECT COURSE TITLE NUMBER	POINTS	GRADE
HARLAN FISKE STONE SCHOLAR-SECOND YEAR ENDING MAY 16					
Fall 2014			Fall 2014		
LAW L 6101 CIVIL PROCEDURE	4.00	B+	LAW L 6483 REAL ESTATE TRANSACTIONS	3.00	B
LAW L 6105 CONTRACTS	4.00	B+	LAW L 6655 HUM RIGHTS LAW REV EDIT B	1.00	CR
LAW L 6113 LEGAL METHODS	3.00	CR	LAW L 6675 MAJOR WRITING CREDIT	0.00	CR
LAW L 6115 LEGAL PRACTICE WORKSHOP I	1.00	F	LAW L 6792 EXT:BRONX DEFENDERS-HOLSTIC	2.00	B+
LAW L 6118 TORTS	4.00	B+	LAW L 6792 EXT:BRONX DEFENDERS-FIELD	2.00	CR
Spring 2015			LAW L 6927 REAL ESTATE DEVELOPMENT	2.00	B
LAW L 6108 CRIMINAL LAW	3.00	B	LAW L 8887 S 9/11 & RIGHTS/MCN-CITIZ	2.00	B+
LAW L 6116 PROPERTY	4.00	B	LAW L 9175 S TRIAL PRACTICE	2.00	B+
LAW L 6121 LEGAL PRACTICE WORKSHOP I	1.00	F	Spring 2017		
LAW L 6133 CONSTITUTIONAL LAW	4.00	B	LAW L 6655 HUM RIGHTS LAW REV EDIT B	1.00	CR
LAW L 6183 US & INTL LEGAL SYSTEM	3.00	B+	LAW L 6661 EXT:FED CT CLERK SOUTHERN	1.00	CR
LAW L 6679 FOUNDATION YEAR MOOT COUR	0.00	CR	LAW L 6661 EXT:FED CT CLERK SONY-FLD	3.00	CR
Fall 2015			LAW L 6672 MINOR WRITING CREDIT	0.00	CR
LAW L 6109 CRIMINAL INVESTIGATIONS	3.00	B+	LAW L 9172 SEM-ADVANCED TRIAL PRACTI	2.00	A-
LAW L 6238 CRIMINAL ADJUDICATION	3.00	B+	LAW L 9256 MASS INCARCERATION CLINIC	3.00	B+
LAW L 6250 IMMIGRATION LAW	3.00	B+	LAW L 9256 MASS INCARCERATH CLNC-FRJ	4.00	CR
LAW L 6655 HUMAN RIGHTS LAW REVIEW	0.00	CR	Spring 2016		
LAW L 6656 EXTERNSHIP: COMMUNITY DEF	2.00	CR	LAW L 6241 EVIDENCE	4.00	B+
LAW L 6656 EXT:COMMUNITY DEFENSE-FLD	2.00	CR	LAW L 6269 INTERNATIONAL LAM	3.00	B+
Spring 2016			LAW L 6359 PROFESSIONAL RESP IN CRIM	3.00	A
LAW L 6241 EVIDENCE	4.00	B+	LAW L 6655 HUMAN RIGHTS LAW REVIEW	0.00	CR
LAW L 6269 INTERNATIONAL LAM	3.00	B+	LAW L 6656 EXTERNSHIP: COMMUNITY DEF	2.00	CR
LAW L 6359 PROFESSIONAL RESP IN CRIM	3.00	A	LAW L 6656 EXT:COMMUNITY DEFENSE-FLD	2.00	CR
LAW L 6655 HUMAN RIGHTS LAW REVIEW	0.00	CR	LAW L 9785 READG GRP-ROLE PUB DEFENDER	1.00	CR
LAW L 6656 EXTERNSHIP: COMMUNITY DEF	2.00	CR			
LAW L 6656 EXT:COMMUNITY DEFENSE-FLD	2.00	CR			
LAW L 9785 READG GRP-ROLE PUB DEFENDER	1.00	CR			

This official transcript was produced on
 MAY 19, 2017.



SEAL OF COLUMBIA UNIVERSITY
 IN THE CITY OF NEW YORK

Barry S. Kane

Barry S. Kane
 Associate Vice President and University Registrar

TO VERIFY AUTHENTICITY OF DOCUMENT, THE BLUE STRIP BELOW CONTAINS HEAT SENSITIVE INK WHICH DISAPPEARS UPON TOUCH



ADAM EISENBERG
JUDGE

August 15, 2022

To Whom It May Concern:

It is my honor to write a letter of recommendation for Shawn Shariati for a Federal clerkship. I believe he is an excellent attorney, and he would do a fantastic job working for a Federal judge.

Seattle Municipal Court handles all misdemeanors and gross misdemeanors that occur in the City of Seattle. From August 2017 to August 2019, Mr. Shariati appeared as a public defender in my court on a regular basis. He was always well prepared for his cases, extremely professional toward court staff and opposing counsel, and advocated strongly and effectively for his clients. He also demonstrated a keen knowledge of the law, and a creative flair when it came to presenting legal arguments before the court.

Mr. Shariati is a very compassionate attorney and human being. Many of his clients struggled with mental health and drug issues, and he was frequently placed in the very difficult position of having to advocate per his clients' wishes even when those might be contrary to their health and well-being. He always accomplished this with great skill and sensitivity.

Ultimately, I have great respect for Mr. Shariati's skill and talents as an attorney, and I'm certain he will shine in any clerkship.

Yours sincerely,

Adam Eisenberg
Presiding Judge, Seattle Municipal Court

Seattle Municipal Court, P.O. Box 34987, Seattle, WA 98124-4987
Telephone: (206) 684-5600
seattle.gov/courts

March 23, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

It is my pleasure to recommend Shawn Shariati for a clerkship.

I sit as a judge on Seattle Municipal Court, which is a court of limited jurisdiction in Seattle, WA. As an attorney for the Associated Counsel for the Accused (ACA) for King County Department of Public Defense, Shawn routinely appeared in front of me on court matters ranging from trials, arraignments, pre-trial hearings, sentencing hearing, and review hearings.

Shawn is well versed on Washington State laws. He generated well-developed and comprehensive defenses for his clients. I know Shawn to be of high intelligence and good character. He approached his work at ACA with due diligence, taking pride in honest representation, and excellent work ethics. Shawn demonstrated that he could work collaboratively with the court's participants, e.g., prosecutors, probation officers, police officers, defense attorneys, and community organizations in order to create an equitable and accessible criminal justice system.

Shawn will assist you greatly with the achievement of goals and objectives set forth by your chambers. I believe Shawn is regarded as attorney who committed to the rule of law and dedicated to making sure that courts of law are considered an independent and coequal branch of government which is accessible to the public and provides fair and impartial justice.

I have no doubt Shawn will be an invaluable asset to your court. If you would like to speak directly to me about Shawn's candidacy, please feel free to contact me.

Sincerely,

Judge Faye R. Chess

Faye Chess - judgefaye chess@gmail.com

March 23, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

My name is Matthew Covello, I am the attorney supervisor for the Seattle Municipal Court Unit of King County Public Defense/ACAD. This letter is a recommendation for Shawn Shariati as an attorney. I supervised Mr. Shariati, in full capacity, for several years.

He was a team player, always volunteering to assist when necessary. He was also a leader and assisted me in running a very large and complex unit of public defenders.

Mr. Shariati has proven to be a competent, diligent, and self-motivated public defender. He represented clients at all levels of criminal proceedings (arraignment through review/probation hearings) and did so without incident. He did not receive a single complaint even though he represented literally hundreds of clients during this time.

It is important to note that Seattle Municipal Court is the largest court by volume in the region, and has a very high percentage of clients who suffer from mental health, addiction, and homelessness. These can be some of the most difficult clients to deal with, and Mr. Shariati interacted with these clients as though he was a veteran public defender.

Mr. Shariati showed good writing skills and is a competent advocate. He is eager to learn the law and was a "team player" during his time in our office. He was also well-liked by the staff, attorneys, and support staff alike. There were no incidents of concern during the time that he was employed at King County.

I did not want him to leave our office and would want to hire him if he wished to return. Please contact me if you have any further questions.

Sincerely,

Matthew Covello
Attorney Supervisor, Seattle Municipal Court and Interim Senior Supervisor
(206) 477-8999
matthew.covello@kingcounty.gov

Matthew Covello - matthew.covello@kingcounty.gov

Writing Sample

Shawn Ashkan Shariati
652 Dean Street, Apt. 1
Brooklyn, NY 11238
(516) 770-6344
ss4140@columbia.edu

Attached are two writing samples.

1. An opinion denying a motion on procedural grounds.
2. A motion to suppress evidence and dismiss a criminal case.

Sample #1

QUARK *v.* UNITED STATES

AARON SATIE, United States District Judge:

Quark (“Petitioner”), proceeding *pro se*, moves to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (hereafter, “Pet’r Mot.”), Dkt. 1. For the following reasons, Petitioner’s Motion is DISMISSED as untimely.

BACKGROUND

Petitioner pled guilty to the crimes of conspiracy to commit access device fraud and aggravated identity theft in connection with a scheme involving fraudulently obtained debit and credit cards. Transcript of March 10, 2014 Court Appearance (hereafter, “March 10 Tr.”), *United States v. Rom*, No. 13 CR. 795 (AS), (S.D.N.Y. 2013), Dkt. 54, at 27. On July 22, 2014, this Court sentenced Petitioner to time served for the conspiracy count and two years imprisonment for aggravated identity theft, to run consecutively to the conspiracy sentence. Transcript of July 22, 2014 Court Appearance (hereafter, “July 22 Tr.”), *Rom*, Dkt. 78, at 24–26. Additionally, the Court ordered Petitioner to pay approximately \$17,000 in forfeiture and a similar amount in restitution. *Id.* Judgment was entered on July 22, 2014. Judgment, *Rom*, Dkt. 77 at 1. Petitioner did not pursue a timely direct appeal of his conviction.¹ Order on Motion for Leave to Appeal (hereafter, “Leave to Appeal Order”), *Rom*, Dkt. 97, at 2.

On September 21, 2015, Petitioner filed a motion seeking relief pursuant to 28 U.S.C. § 2255, under the grounds that he received ineffective assistance of counsel. Pet’r Mot. At 1; Memorandum of Law in Support Motion to Vacate, Set, Aside or Correct Sentence (hereafter, “Pet’r Mem.”), Dkt. 2,

¹ On October 19, 2014, Petitioner filed a motion for leave to file a late notice of appeal pursuant to the Federal Rules of Appellate Procedure Rule 4(b)(4). Motion to File Late Notice of Appeal (hereafter, “Mot. Late Appeal”), *Rom*, Dkt. 87, at 1. Petitioner’s motion was denied on March 11, 2014. Leave to Appeal Order at 2.

Sample #1

at 1. Petitioner asserts that he received ineffective assistance because his counsel: (1) forced him to plead guilty despite the Government's "failure to show that Petitioner knowingly committed aggravated identity theft," and (2) did not contest the "improper imposition of forfeiture as restitution." Pet'r Mem. At 2.

On October 16, 2015, this Court directed Petitioner to show cause as to why his motion should not be denied as time-barred. Order Directing Affirmation (hereafter, "Order"), Dkt. 4 at 2. Petitioner subsequently filed an Affirmation stating that his lateness was due to: (1) inadequate access to prison library resources; (2) language barriers; and (3) denial of access to his legal files. Affirmation, Dkt. 5, at 1-3. On February 14, 2016, the Government filed a memorandum in opposition to the Petitioner's Motion, arguing that Petitioner's motion is procedurally barred as untimely under the Antiterrorism and Effective Death Penalty Act of 1996 (hereafter, "AEDPA") and that the Petitioner's counsel was not ineffective. Memorandum of Law of the United States in Opposition to Petitioner's Motion Pursuant to 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct His Sentence (hereafter, "Gov. Mem."), *Rom*, Dkt. 130, at 15-26.²

DISCUSSION

AEDPA established a one-year statute of limitations for the filing of a motion pursuant to 28 U.S.C. § 2255. *See* 28 U.S.C. § 2255(f). A Section 2255 motion is timely only if it is filed within one year from the latest of: (1) the judgment of conviction becoming final; (2) a government-created impediment to making such a motion being removed; (3) the right asserted being initially recognized by the Supreme Court, if the right has been made retroactively applicable to cases on collateral review; or (4) the facts supporting the claims being discoverable through the exercise of due diligence. *See* 28 U.S.C. § 2255(f). Because Petitioner has not alleged that the Government impeded the filing of his

² The Government mistakenly filed their Memorandum of Law in Opposition of Petitioner's Motion in *United States v. Rom*, No. 13 CR. 795 (AS), (S.D.N.Y. 2013).

Sample #1

motion, that the Supreme Court has recently recognized any rights he is asserting, or the discovery of any new facts supporting his claim, the relevant date for calculating the statute of limitations is the date on which the judgment of conviction became final.

“[A]n unappealed federal criminal judgment becomes final when the time for filing a direct appeal expires.” *Moshier v. United States*, 402 F.3d 116, 118 (2d Cir. 2005). Because a criminal defendant must file a notice of appeal within fourteen days after the entry of judgment, an unappealed conviction becomes “final” for the purposes of the one-year AEDPA limitations period fourteen days after judgment is entered. *See* Fed. R. App. P. 4(b).

Judgment was entered in Petitioner’s criminal case on July 22, 2014, and Petitioner did not pursue a timely direct appeal of his conviction. Leave to Appeal Order at 2. Therefore, Petitioner’s conviction became final on August 5, 2014. To be timely Petitioner’s motion must have been filed on or before August 5, 2015. Petitioner’s motion, which was dated August 31, 2015, Pet’r Mot. At 14, is therefore untimely.³

The one-year statute of limitations for Section 2255 motions may be equitably tolled. *Green v. United States*, 260 F.3d 78, 82 (2d Cir. 2001). Equitable tolling is available only in rare and exceptional circumstances. *Smith v. McGinnis*, 208 F.3d 13, 17 (2d Cir. 2000). To equitably toll the statute, the petitioner must establish that (a) “extraordinary circumstances” prevented him from filing a timely motion, and (b) he acted with “reasonable diligence” during the period for which he seeks tolling. *Martinez v. Superintendent of E. Corr. Facility*, 806 F.3d 27, 31 (2d Cir. 2015).

Petitioner argues that his motion should not be time-barred because he had inadequate access to prison library resources, is unable to read or write English, and was unable to procure his legal files from counsel. Affirmation

³ The Second Circuit recognizes the “prison mailbox rule,” which states that a *pro se* prisoner “satisfies the time limit for filing a notice of appeal if he delivers the notice to prison officials within the time specified.” *Noble v. Kelly*, 246 F.3d 93, 97 (2d Cir. 2001). Thus, although Petitioner’s habeas motion was not received by this Court until September 21, 2015, the Court will consider the motion to have been filed on August 31, 2015.

Sample #1

at 1-5. Although the Court is sympathetic to Petitioner's circumstances, Petitioner's reasons do not provide a basis for equitable tolling. *See, e.g., Grullon v. United States*, No. 05 CIV. 1810 (DAB), 2007 WL 2460643, at *1 (S.D.N.Y. Aug. 27, 2007) (restricted prison law library access is not a "circumstance so rare or exceptional to warrant any tolling of the statute of limitations."); *Zhang v. United States*, No. 01 CIV. 2591 (DAB), 2002 WL 392295, at *3 (S.D.N.Y. Mar. 13, 2002) (limited knowledge of the English language, absence of legal assistance program at the correctional facility, and inability to communicate with assistants at the law library insufficient grounds for equitable tolling); *Davis v. McCoy*, No. 00 CIV. 1681 (NRB), 2000 WL 973752, at *2 (S.D.N.Y. July 14, 2000) ("inability to obtain documents does not rise to the level of extraordinary circumstances").

CONCLUSION

For the foregoing reasons, Petitioner's 28 U.S.C. § 2255 motion is time-barred because it was not timely filed, and Petitioner has not established that he is entitled to equitable tolling. Therefore, Petitioner's motion is DISMISSED.

When a motion is denied on procedural grounds, the petitioner may obtain a certificate of appealability if he shows "that jurists of reason would find it debatable whether the motion states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also Eltayib v. United States*, 294 F.3d 397, 400 (2d Cir. 2002). Because the late filing of this motion is not debatable, the Court declines to issue a certificate of appealability.

Sample #2

Shawn Ashkan Shariati
Attorney for Julian Bashir

Municipal Court
For the City of Seattle, Washington

City of Seattle,

Plaintiff;

v.

Julian Bashir,

Defendant

Case No.
DS9-000

Motion to Suppress and Dismiss

The Defense moves for the following:

1. Dismissal of count 1, Driving Under the Influence (“DUI”), because the police lacked probable cause for the crime at the time of Mr. Bashir’s arrest.
2. Dismissal of both counts 1, Driving Under the Influence, and 2, False Reporting, because the Prosecution will be unable to meet their burden of production with the suppression of unlawfully gathered statements.

Sample #2

FACTS

Officers J'Dan and Duras were on bike duty, patrolling the neighborhood of Belltown, watching the bars close after the New Year's celebration on January 1, 2018. *See* GO#2018-000000, Page 10 of 51. Around 2 A.M., they were dispatched to the intersection of First Avenue and Bell Street, where a woman was allegedly pushed out of a car. *Id.* They came upon the scene and saw a woman, Jadzia Dax, laying on the road, crying and unintelligible, and a man, Julian Bashir, trying to help Jadzia up.

Officer J'Dan tended to Jadzia in the street, and spoke with a witness on the scene, Kira Nerys. Kira told Officer J'Dan that she witnessed a woman being pushed out the passenger side of a car, followed by a guy getting out of the same car, trying to get the woman back inside the car. *See* AXON_Body_2_Video_2018-01-01_0215-file 5, at 2:55. Kira did not see who was driving the car. *Id.*

In almost no time, there were approximately seven officers on the scene: T'Kuvma, Kahless, Worf, Mogh, Noggra, Duras, and J'Dan. *See* GO#2018-000000, Page 20 of 51. Surrounded by officers, Mr. Bashir was questioned about what happened in the car. When first asked for his name, Mr. Bashir gave the name Benjamin Sisko, *See* AXON_Body_2_Video_2018-01-01_0215, at 2:45. After intense questioning about his name, an officer yelled at Mr. Bashir, "he's lying about his name and he has a warrant." *See* AXON_Body_2_Video_2018-01-01_0215, at 8:45. Mr. Bashir was clearly not free to leave, surrounded by officers who would arrest him on a warrant. *See* AXON_Body_2_Video_2018-01-01_0215, at 9:55. Officers continued to question Mr. Bashir about his name and they knew the answers would likely be self-incriminating. Mr. Bashir ultimately gave his name soon after being

Sample #2

yelled at. *See* AXON_Body_2_Video_2018-01-01_0215, at 10:08. Mr. Bashir was never given a *Miranda* warning.

The officers moved their investigation from the crime of False Reporting to the crime of Driving Under the Influence. This investigation occurred even though no officers or civilian witnesses observed Mr. Bashir driving. *See* AXON_Body_2_Video_2018-01-01_0215, at 11:00. Sometime later the “DUI officer,” Officer Gowron, arrived at the scene. Officer Gowron directed Mr. Bashir to the sidewalk and began questioning him to investigate a possible DUI. *See* AXON_Body_2_Video_2018-01-01_0229, at 2:40. Mr. Bashir, in response to questioning, told Officer Gowron he had “two shots.” *See* AXON_Body_2_Video_2018-01-01_0229, at 4:00. Officer Gowron told Mr. Bashir “I’d like to do some field sobriety tests with you.” *See* AXON_Body_2_Video_2018-01-01_0229, at 4:15. First, Officer Gowron administered the horizontal gaze nystagmus test (“HGN”), which Mr. Bashir completed. *See* AXON_Body_2_Video_2018-01-01_0229, at 5:03. Then Officer Gowron then administered the walk and turn test. *See* AXON_Body_2_Video_2018-01-01_0229, at 7:05. As Officer Gowron explained the test, Mr. Bashir interrupted Officer Gowron to inform him about a physical condition. *See* AXON_Body_2_Video_2018-01-01_0229, at 8:01. Mr. Bashir had surgery on his feet. *Id.* One is longer than the other, and he had mobility and balance problems because of it. *Id.* After Mr. Bashir completed the walk and turn test, Officer Gowron attempted to explain the portable breath test (“PBT”) to Mr. Bashir and asked him to take it: “I got one last thing, it’s a voluntary test, it’s a PBT, the portable breath tester, you’re gonna do that?” *See* AXON_Body_2_Video_2018-01-01_0229, at 9:02. Mr. Bashir agreed and gave a breath sample. *See* AXON_Body_2_Video_2018-01-01_0229, at 10:02. When the results of the PBT came in, Officer Gowron said, “it’s a little higher than I expected it to be.” *See* AXON_Body_2_Video_2018-

Sample #2

01-01_0229, at 10:20. Mr. Bashir was cuffed soon after, and after he was searched, he was given the *Miranda* warning. *See* AXON_Body_2_Video_2018-01-01_0229, at 12:18.

ARGUMENT

1. The Court must dismiss count 1, Driving Under the Influence, because the police lacked probable cause for the crime at the time of arrest.

An arrest is constitutionally valid when, at the moment the arrest was made, the officer had probable cause to arrest, and at that moment, facts and circumstances within the officer's knowledge, and of which the officer had reasonably trustworthy information, were sufficient to warrant a prudent man in believing that the defendant had committed or was committing an offense. *Beck v. State of Ohio*, 379 U.S. 89, 91 (1964). In a DUI arrest, the question is whether the investigating officer, at the time of the arrest, had knowledge or reasonably trustworthy information that the defendant was driving a motor vehicle while under the influence. *O'Neill v. Department of Licensing*, 62 Wash. App. 112, 116 (Div. 1 1991).

1.1. The PBT results cannot be considered for the purposes of probable cause because they were administered in violation of Washington Administrative Code ("WAC") 448-15-030.

WAC 448-15-030 describes the "policies and procedures approved by the state toxicologist" that an operator of the PBT must follow. If the policies and procedures approved by the state toxicologist are not followed, the results of the test are not valid. *State v. Smith*, 130 Wash. 2d 215, 221 (1996).

Sample #2

One of the “policies and procedures” is an officer administering the PBT must advise the subject, prior to the test, that: (1) it is a voluntary test, and (2) it is not an alternative to any evidential breath alcohol test. WAC 448-15-030(1).

When Officer Gowron brought up the PBT to Mr. Bashir, he said, “I got one last thing, it’s a voluntary test, it’s a PBT, the portable breath tester, you’re gonna do that?” See AXON_Body_2_Video_2018-01-01_0229, at 9:02. Officer Gowron failed to mention that the PBT “is not an alternative to any evidential breath alcohol test,” which is required by WAC 448-15-030. Because the test was done in violation of WAC 448-15-030, the results are not valid and cannot be considered for purposes of probable cause.

1.2. The field sobriety tests (“FST”) results cannot be considered for purposes of probable cause because they were not voluntary.

There is “no legal obligation to perform a field sobriety test.” *City of Seattle v. Personeus*, 63 Wash.App. 461, 465–66 (1991). A suspect's right to refuse a field sobriety test is based in common law. *City of Seattle v. Stalsbroten*, 138 Wash.2d 227, 236–37 (1999). Therefore, field sobriety tests are voluntary and are subject to constitutional requirements concerning voluntariness. Statements must be the “product of an essentially free and unconstrained choice by its maker.” *Schneckloth v. Bustamante*, 412 U.S. 218, 225 (1973). This is done by assessing the “totality of the characteristics of the accused and the details of the interrogation.” *Id.*, at 226. Characteristics that have been considered for voluntariness include the lack of any advice to the accused of his constitutional rights and repeated and prolonged questioning. *Id.*

For several reasons, Mr. Bashir’s consent to perform the field sobriety tests was not voluntary. First, Officer Gowron did not tell Mr. Bashir that the test was voluntary, rather, he simply tells Mr. Bashir “I’d like to do some field

Sample #2

sobriety tests with you.” *See* AXON_Body_2_Video_2018-01-01_0229, at 4:20. Second, Mr. Bashir was never informed of his right to silence or counsel. Third, Mr. Bashir was questioned at length by several officers. Fourth, Mr. Bashir was not free to leave, as he was informed of his outstanding warrants and was surrounded by several officers.

1.3. With the suppression of the PBT result and the FST results, the evidence at the time of arrest was not sufficient for probable cause, requiring the Court to dismiss count 1, Driving Under the Influence.

At the time of arrest, the evidence supporting inferences that Mr. Bashir committed the crime of DUI were the following: (1) admission of drinking two shots of Hennessey; (2) a faint odor of intoxicants; and (3) watery eyes. *See* GO # 2018-00000, Page 36 of 51. These are not enough to establish probable cause for the crime of DUI, especially when considering the other overwhelming evidence that supported the inference that Mr. Bashir did not commit the crime of DUI.

First, no one witnessed Mr. Bashir driving on that night and admissions to driving occurred after his arrest. To have probable cause to arrest for the crime of DUI, the officer must have had knowledge or reasonably trustworthy information that the defendant had been driving at the time of the arrest. Civilian witness, Kira Nerys, spoke with police. She was asked if she saw Mr. Bashir driving and she did not. *See* AXON_Body_2_Video_2018-01-01_0215-file 5, at 2:55. No officers saw Mr. Bashir driving. *See* AXON_Body_2_Video_2018-01-01_0214, at 11:00.

Second, there were many other facts that supported the inference that Mr. Bashir did not commit the crime of DUI. The car that police believed Mr.

Sample #2

Bashir drove, a Chrysler 300C, was: (1) parked when police arrived; and (2) registered to Jadzia Dax, the woman lying on the street. When police first saw Jadzia Dax lying on the street, she was next to the driver side of the car. And lastly, no car key was recovered on Mr. Bashir.

Even without the suppression of the field sobriety tests, there would still not be enough facts to rise to probable cause because Mr. Bashir's performed well on the field sobriety tests. When he administered the HGN test, Officer Gowron did not see any nystagmus prior to 45 degrees and only saw nystagmus at maximum deviation. *See* GO # 2018-00000, Page 36 of 51. When discussing the HGN results with another officer, Officer Gowron said, "[Mr. Bashir's] eyes were pretty good." *See* AXON_Body_2_Video_2018-01-01_0229, at 13:55. With the walk and turn test, other than doing the turn incorrectly by pivoting on his toes, doing ten steps instead of nine, and missing heel to toe on one step, Mr. Bashir completed the test. *See* GO # 2018-00000, Page 36 of 51. Mr. Bashir informed Officer Gowron of a physical issue he had with his feet, which could affect the reliability of the walk and turn test's results. *Id*; and *see* AXON_Body_2_Video_2018-01-01_0229, at 8:15. When discussing the walk and turn results with another officer, Officer Gowron said, "[Mr. Bashir's] steps were not good," however, "[the steps] were the best [he'd] seen in a long time." *See* AXON_Body_2_Video_2018-01-01_0229, at 13:55. Because there was no probable cause for the crime of DUI at the time of arrest, the Court must dismiss count 1.

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- 2. The Court must dismiss counts 1, Driving Under the Influence, and 2, False Reporting, because the Prosecution will be unable to meet their burden of production with the suppression of unlawfully gathered statements.**

An individual is considered in “custody” for purposes of *Miranda* when their liberty of action is deprived in any significant way. *Miranda v. Arizona*, 384 U.S. 436, 479 (1966). An individual is considered “interrogated” for the purposes of *Miranda* when state agents use any words or actions that the agent “should know are reasonably likely to elicit an incriminating response.” *Rhode Island v. Innis*, 446 U.S. 291, 292 (1980). If an individual will be subjected to “custodial interrogation,” they must be given the *Miranda* warnings from the outset. *Miranda*, 384 U.S. at 467.

2.1. Mr. Bashir was in “custody” for purposes of *Miranda* when questioned about his name.

When police arrive at the scene, they immediately moved Mr. Bashir from where he was originally located. Mr. Bashir was surrounded by seven officers. At some point, Mr. Bashir was told he had a warrant. *See* AXON_Body_2_Video_2018-01-01_0214, at 8:50. Another officer tells Mr. Bashir “[he will] stay here all night to process him.” *See* AXON_Body_2_Video_2018-01-01_0215-file 2, at 9:29. Mr. Bashir was clearly not free to leave and was seized; Mr. Bashir was in “custody” for the purposes of *Miranda*.

Sample #2

2.2. Mr. Bashir was “interrogated” for purposes of *Miranda* when questioned about his name.

After depriving Mr. Bashir of a significant amount of his liberty of action, Officer Kahless yelled at Mr. Bashir, telling Mr. Bashir that he knows Mr. Bashir is lying about his name. See AXON_Body_2_Video_2018-01-01_0214, at 8:49. Officer Kahless continued to ask Mr. Bashir what his real name was, and it is at this point where Mr. Bashir is subject to “interrogation” for the purposes of *Miranda*. Officer Kahless knew “[Mr. Bashir] [was] lying,” and asked him what his real name was. Officer Kahless knew that the following answer would likely incriminate Mr. Bashir with regards to the crime of False Reporting.

2.3. Mr. Bashir was never given his *Miranda* warnings at the outset of his “custodial interrogation.”

If Mr. Bashir was informed of his right to silence or an attorney, the investigation may have stopped. Because he was not informed those rights, it prolonged his interrogation, allowing officers to unlawfully obtain evidence. Defense requests that all statements and evidence derived from that unlawful custodial interrogation be suppressed, starting from the point where Officer Kahless yelled at Mr. Bashir, stating that he knew that Mr. Bashir was lying. This would include statements, observations, consent to perform the FST and PBT, and consent to blow into the DataMaster.

2.4. With the suppression of unlawfully gathered statements, the Prosecution can no longer meet their burden of production,

Sample #2

requiring the Court to dismiss counts 1, Driving Under the Influence, and 2, False Reporting.

Applicant Details

First Name **Alizeh**
 Last Name **Sheikh**
 Citizenship Status **U. S. Citizen**
 Email Address alizehsheikh@comcast.net
 Address

Address
Street
4003 Oak Forest Drive NE
City
Marietta
State/Territory
Georgia
Zip
30062
Country
United States

Contact Phone Number **4047866900**

Applicant Education

BA/BS From **Duke University**
 Date of BA/BS **May 2021**
 JD/LLB From **Harvard Law School**
<https://hls.harvard.edu/dept/ocs/>
 Date of JD/LLB **May 25, 2024**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **Harvard Human Rights Journal**
 Moot Court Experience **Yes**
 Moot Court Name(s) **Ames Moot Court**

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships **No**
 Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Francus, Michael
mfrancus@law.harvard.edu

Ardalan, Sabrineh
sardalan@law.harvard.edu
617-384-7504

Kelly, Nancy
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617-603-1808

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Alizeh Myra Sheikh

Marietta, GA • (404)-786-6900 • asheikh@jd24.law.harvard.edu

June 12, 2023

The Honorable Jamar K. Walker
Eastern District of Virginia
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am a rising third-year student at Harvard Law School. I am writing to apply for a clerkship in your chambers starting in 2024, and I am also available for any subsequent time period for which you are hiring. In addition to clerking, I plan to pursue a career related to immigrants' rights. I was born, raised, and attended college in the South, and I hope to live there long-term. As such, I am applying to clerkship and job opportunities primarily in the region.

Several experiences have refined my legal research and writing skills. In moot court, I co-wrote briefs addressing the constitutionality of a single, two-year lifetime term limit for state legislators. As a research assistant for professor emerita Deborah Anker, I extensively researched asylum case law for the annual update of her treatise *Law of Asylum*. I will be a senior research assistant on this project as a 3L and will take on a greater editorial role. Finally, as the incoming executive managing editor for the *Harvard Human Rights Journal*, I will oversee editorial work.

My resume, official transcript, and writing sample are attached. The following individuals will separately submit letters of recommendation, and they welcome inquiries in the meantime:

Prof. Michael Francus
Harvard Law School
Writing Instructor
(617)-496-8455
mfrancus@law.harvard.edu

Nancy Kelly
Greater Boston Legal Servs.
Clinic Supervisor
(617)-515-3043
nkelly@gbls.org

Prof. Sabrineh Ardalan
Harvard Law School
Seminar Professor
(617)-384-7504
sardalan@law.harvard.edu

Sincerely,
Alizeh Sheikh

Alizeh Myra Sheikh

Marietta, GA • (404)-786-6900 • asheikh@jd24.law.harvard.edu

Education

Harvard Law School, J.D., anticipated graduation May 2024

Activities: *Harvard Human Rights Journal*, Executive Managing Editor
 Professor Deborah Anker, incoming Senior Research Assistant
 Ames Moot Court participant, top sixteen teams
 Vorenberg Equal Justice Summer Fellowship

Duke University, B.S. Evolutionary Anthropology, B.A. Global Cultural Studies, May 2021

Honors: Magna cum laude
 Phi Beta Kappa

Thesis: *Hormonal correlates of female dominance in the blue-eyed black lemur*, won departmental thesis award and published in *Hormones and Behavior*

Relevant Experience

Asian Americans Advancing Justice Atlanta, GA, Litigation Intern May 2023 – August 2023
 Assisting with impact litigation related to immigrant justice and voting rights, including conducting legal and factual research for ongoing and potential lawsuits, and drafting and reviewing pleadings.

Innovation Law Lab, GA, Legal Intern May 2022 – August 2022
 Wrote civil rights-civil liberties complaint for detained immigrant. Formulated humanitarian parole requests for Afghan families. Wrote FOIA requests for the Executive Office for Immigration Review. Wrote memo and report on economic programs for communities surrounding detention facilities. Wrote two memos on immigration legal issues. Formulated work permit applications.

World Relief Durham, NC, Immigration Legal Services Center, Intern August 2020 – July 2021
 Developed bilingual resources for community presentations, planned and implemented DACA application workshops, translated documents, drafted briefs for immigration applications, communicated with clients.

Drea Lab, Duke University, NC, Researcher January 2019 – May 2021
 Was awarded \$9,755 for thesis research, including the Duke Lemur Center Director's Fund, Deans Summer Research Fellowship, Undergraduate Research Support, and Molly Glander Research Support grants.

Southside Worker Center, Duke Engage Tucson, AZ, Intern Summer 2019
 Organized and led bilingual know-your-rights presentations and an immigration court accompaniment program. Helped respond to rapid response calls. Performed basic interpretation work.

Kenan Institute for Ethics, NC, Summer Fellow Summer 2018
 Was awarded a \$5,000 grant to conduct research on identity and legal status in the Atlanta, GA and Durham, NC immigrant populations. Worked with 15+ immigration law firms, nonprofits, and Hispanic churches.

Klinke Immigration Law Firm, GA, Legal Assistant May 2017 – July 2017
 Drafted naturalization, DACA, employment, and marriage-based immigration applications, input client data.

Relevant Publication

Alizeh Sheikh, *Elucidating the Relationship Between Legal Status and Identity Formation*, 13 U. Cal. Berkeley Under. Psych. J. 56 (2020).

Personal

Language: Spanish – professional working proficiency in reading, writing, speaking, and comprehension
Interests: Reading contemporary novels, watching films, weightlifting

Harvard Law School

Date of Issue: June 2, 2023

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Record of: Alizeh M Sheikh

Current Program Status: JD Candidate

Pro Bono Requirement Complete

JD Program				Fall 2022 Total Credits:		12		
Fall 2021 Term: September 01 - December 03				Winter 2023 Term: January 01 - January 31				
1000	Civil Procedure 6	P	4	2330	International Labor Migration	H	2	
	Rubenstein, William				Rosenbaum, Jennifer			
1001	Contracts 6	P	4		Winter 2023 Total Credits:			2
	Bar-Gill, Oren				Spring 2023 Term: February 01 - May 31			
1002	Criminal Law 6	H	4	2000	Administrative Law	H	4	
	Rabb, Intisar				Vermeule, Adrian			
1006	First Year Legal Research and Writing 6A	H	2	8020	Harvard Immigration and Refugee Clinic	H*	5	
	Francus, Michael				Ardalan, Sabrineh			
1005	Torts 6	H	4		* Dean's Scholar Prize			
	Hanson, Jon				Immigration and Refugee Advocacy	H	2	
					Ardalan, Sabrineh			
	Fall 2021 Total Credits:		18	2115				
	Winter 2022 Term: January 04 - January 21			3018				
1058	Leadership Fundamentals	CR	2		Strategic Litigation and Immigration Advocacy	H	2	
	Westfahl, Scott				Ardalan, Sabrineh			
	Winter 2022 Total Credits:		2		Spring 2023 Total Credits:		13	
					Total 2022-2023 Credits:		27	
	Spring 2022 Term: February 01 - May 13				Fall 2023 Term: August 30 - December 15			
2519	American Legal History: From Reconstruction to the Present	H	3	8043	Crimmigration Clinic	~	3	
	Weinrib, Laura				Torrey, Philip			
1024	Constitutional Law 6	H	4	2597	Crimmigration: The Intersection of Criminal Law and	~	2	
	Stephanopoulos, Nicholas				Immigration Law			
1006	First Year Legal Research and Writing 6A	H	2		Torrey, Philip			
	Francus, Michael			2069	Employment Law	~	4	
1003	Legislation and Regulation 6	H	4		Sachs, Benjamin			
	Renan, Daphna			2169	Legal Profession	~	4	
1004	Property 6	H	4		Yoon, Albert			
	Fisher, William				Fall 2023 Total Credits:		13	
	Spring 2022 Total Credits:		17		Winter 2024 Term: January 02 - January 19			
	Total 2021-2022 Credits:		37	2249	Trial Advocacy Workshop	~	3	
					Sullivan, Ronald			
	Fall 2022 Term: September 01 - December 31				Winter 2024 Total Credits:		3	
2048	Corporations	H	4		Spring 2024 Term: January 22 - May 10			
	Catan, Emiliano				Federal Courts and the Federal System	~	5	
2079	Evidence	H	4	2086	Fallon, Richard			
	Lvovsky, Anna				Spring 2024 Total Credits:		5	
2142	Labor Law	H	4		Total 2023-2024 Credits:		21	
	Sachs, Benjamin							

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Alizeh Sheikh

Alizeh Sheikh

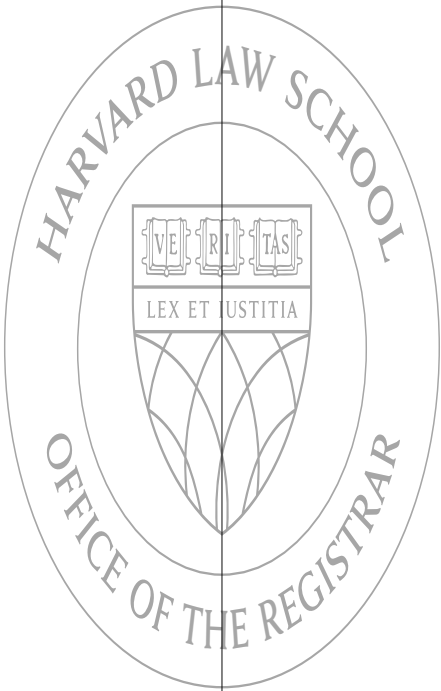
Harvard Law School

Record of: Alizeh M Sheikh

Date of Issue: June 2, 2023
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Total JD Program Credits: 85

End of official record



Alizeh Sheikh
Registrar

HARVARD LAW SCHOOL
 Office of the Registrar
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 Cambridge, Massachusetts 02138
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registrar@law.harvard.edu

Transcript questions should be referred to the Registrar.

~~~~~  
 In accordance with the Family Educational Rights and Privacy Act of 1974, information from this transcript may not be released to a third party without the written consent of the current or former student.  
 ~~~~~

A student is in good academic standing unless otherwise indicated.

Accreditation

Harvard Law School is accredited by the American Bar Association and has been accredited continuously since 1923.

Degrees Offered

J.D. (Juris Doctor)
 LL.M. (Master of Laws)
 S.J.D. (Doctor of Juridical Science)

Current Grading System

Fall 2008 – Present: Honors (H), Pass (P), Low Pass (LP), Fail (F), Withdrawn (WD), Credit (CR), Extension (EXT)

All reading groups and independent clinicals, and a few specially approved courses, are graded on a Credit/Fail basis. All work done at foreign institutions as part of the Law School's study abroad programs is reflected on the transcript on a Credit/Fail basis. Courses taken through cross-registration with other Harvard schools, MIT, or Tufts Fletcher School of Law and Diplomacy are graded using the grade scale of the visited school.

Dean's Scholar Prize (*): Awarded for extraordinary work to the top students in classes with law student enrollment of seven or more.

Rules for Determining Honors for the JD Program

Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.

May 2011 - Present

<i>Summa cum laude</i>	To a student who achieves a prescribed average as described in the <u>Handbook of Academic Policies</u> or to the top student in the class
<i>Magna cum laude</i>	Next 10% of the total class following <i>summa</i> recipient(s)
<i>Cum laude</i>	Next 30% of the total class following <i>summa</i> and <i>magna</i> recipients

All graduates who are tied at the margin of a required percentage for honors will be deemed to have achieved the required percentage. Those who graduate in November or March will be granted honors to the extent that students with the same averages received honors the previous May.

Prior Grading Systems

Prior to 1969: 80 and above (A+), 77-79 (A), 74-76 (A-), 71-73 (B+), 68-70 (B), 65-67 (B-), 60-64 (C), 55-59 (D), below 55 (F)

1969 to Spring 2009: A+ (8), A (7), A- (6), B+ (5), B (4), B- (3), C (2), D (1), F (0) and P (Pass) in Pass/Fail classes

Prior Ranking System and Rules for Determining Honors for the JD Program

Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.

Prior to 1961, Harvard Law School ranked its students on the basis of their respective averages. From 1961 through 1967, ranking was given only to those students who attained an average of 72 or better for honors purposes. Since 1967, Harvard Law School does not rank students.

<u>1969 to June 1998</u>	<u>General Average</u>
<i>Summa cum laude</i>	7.20 and above
<i>Magna cum laude</i>	5.80 to 7.199
<i>Cum laude</i>	4.85 to 5.799

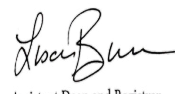
June 1999 to May 2010

<i>Summa cum laude</i>	General Average of 7.20 and above (exception: <i>summa cum laude</i> for Class of 2010 awarded to top 1% of class)
<i>Magna cum laude</i>	Next 10% of the total class following <i>summa</i> recipients
<i>Cum laude</i>	Next 30% of the total class following <i>summa</i> and <i>magna</i> recipients

Prior Degrees and Certificates

LL.B. (Bachelor of Laws) awarded prior to 1969.

The I.T.P. Certificate (not a degree) was awarded for successful completion of the one-year International Tax Program (discontinued in 2004).


 Alizeh Sheikh, Registrar



HARVARD LAW SCHOOL

MICHAEL A. FRANCUS
 Climenko Fellow and Lecturer on Law
 mfrancus@law.harvard.edu | (412) 667-2979

April 18, 2023

Dear Judge,

I write to recommend Alizeh Sheikh as a clerk for your chambers. She was a student of mine in Legal Research in Writing during both fall 2021 and spring 2022, so I have extensive acquaintance with her legal reasoning and legal writing abilities. Given those, I believe she would be a great addition to your chambers.

In the fall, students' main assignment is a ten-page memo analyzing a set of legal issues around the Federal Tort Claims Act. The students submit a draft, meet with me for a one-on-one conference, and then are graded on their revised version of the memo. Alizeh received a comfortable H, not merely a borderline one. Her research turned up the key cases, but more impressive was her understanding of the cases and her ability to work with their facts and reasoning to explain how they governed our case. Her memo was also quite easy to read, coupling good prose with good legal reasoning. During our conference, I noted her superb ability to receive, understand, and incorporate feedback. She had reviewed my comments in advance of the conference and her questions revealed that she had gathered their import and how to use them to improve the memo between the first draft and the revision.

In the spring, students' assignment is an appellate brief analyzing a set of legal issues in an entrapment case. The students work in teams of two, with each writing about ten pages of the brief, covering one issue. Alizeh also shined on this assignment, earning another comfortable H. As in the fall, the brief reflected thorough legal research and superlative reasoning. The teamwork was also evident, with the brief reading like a seamless whole, consistent and readable prose throughout, revealing she was able to gain from and contribute to, her partners' efforts.

I should also add that apart from her academic work, Alizeh is quite personable. She spoke relatively infrequently in class, but always had something of substance to contribute. And in office hours and in our writing conferences she was always engaged, thinking through issues of law at a high level and fluent in discussing them.

If you have any further questions, please do not hesitate to reach out.

Michael Francus

1525 Massachusetts Ave. • Cambridge, MA 02138 • P: (412) 667-2979 •
 E: mfrancus@law.harvard.edu

June 06, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I recommend Alizeh Sheikh enthusiastically for a judicial clerkship. I am a Clinical Professor of Law at Harvard Law School and the Director of the Harvard Law School Immigration and Refugee Clinical Program. I have taught Harvard Law School students both in the classroom and in the clinical setting for the past fifteen years, and I had the pleasure of teaching Alizeh in two seminars and supervising the clinic that she participated in. I have also mentored her since her 1L year given her interest in and commitment to pursuing a career in immigration and workers' rights. Alizeh's intellectual curiosity, combined with her impressive analytical, writing, and advocacy skills make her a superb candidate for a judicial clerkship.

I have supervised and taught dozens of students at Harvard Law School, and Alizeh stands out as one of the quickest studies. She excelled in both the clinical Immigration and Refugee Advocacy Seminar as well as in the Strategic Immigration Litigation course that she took. With great ease, she quickly gained a deep understanding of international law on asylum and refugees and domestic law on due process and equal protection in the context of immigration, as well as the potential costs and benefits of different strategies in immigration litigation and advocacy. Alizeh is a highly effective researcher, a clear writer, and an excellent communicator, regularly posing insightful questions and moving the conversation in new and interesting directions in class.

Alizeh was also one of the top students in the Harvard Immigration and Refugee Clinic, receiving the Dean's Award, which is only awarded to 2 students, for her excellent performance and an H in the accompanying clinical seminar on Immigration and Refugee Advocacy. In the course, she participated frequently in class, making compelling, intelligent comments about all aspects of asylum law. Her writing and communication throughout the semester, including reflection papers and case presentations, was also outstanding. At the end of the semester, she wrote an excellent exam that displayed thorough understanding of asylum law.

In addition, Alizeh excelled in her clinical work. Her legal acumen, empathy, and patience were critical in navigating an often chaotic docket of cases. Alizeh works through complex legal issues very thoroughly and efficiently, managing a lot of moving parts very adroitly. She is very responsible and cares deeply about the work. Her clinical experiences built on her 1L summer work with Innovation Law Lab and have prepared her well for her 2L summer with Asian American Advancing Justice Atlanta—both of which have allowed her to develop a range of legal research and writing skills, from drafting civil rights complaints for immigrants to writing memos and reports on immigration legal issues and drafting pleadings.

Alizeh's final paper, court watch reflection, and discussion posts in the Strategic Litigation and Advocacy course reflect her excellent research and writing skills and deep understanding of systemic issues with the U.S. asylum system, including a new fast-tracked hearing process launched under the Biden administration which deprives immigrants of due process. Her thoughtful contributions and reflections, including after a diverse array of guest speakers, were especially astute.

Alizeh also performed outstanding work in a winter term course on International Labor Migration that I previously co-taught. My colleague JJ Rosenbaum, who taught the course this past winter, sang Alizeh's praises before she even joined the clinic or courses I was teaching. Her paper in the course was one of the best and she received a grade of Honors for her work. Her commentary in class was thoughtful and concrete and she quickly synthesized complex concepts in an entirely new field.

In both her academic and her clinical work, Alizeh has displayed an outstanding capacity for working independently and proactively, for organization and disciplined work ethic, as well as for thinking creatively. As senior researcher for Professor Deborah Anker in charge of updating her Law of Asylum treatise and as Executive Managing Editor of the Harvard Human Rights Journal, Alizeh will put her high-quality research and analysis to good use in the coming year. She responds well to feedback, quickly adopting suggested approaches and open to different ideas. She is genuinely passionate about the law and about learning to be the best attorney possible. She is mature, diligent, flexible, responsive, and thoughtful. Based on my experience clerking in both district court and circuit court, I believe she possesses qualities that would make her an excellent clerk. I recommend her enthusiastically.

I hope this information is helpful to you. Please feel free to contact me with any questions at sardalan@law.harvard.edu. Sincerely,

Sabi Ardalan
Clinical Professor of Law, Harvard Law School
Director, Harvard Immigration and Refugee Clinical Program

Sabrina Ardalan - sardalan@law.harvard.edu - 617-384-7504

June 07, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

It is my pleasure to write this letter of recommendation for Alizeh Myra Sheikh. I had the opportunity to come to know Alizeh during her time at the Harvard Immigration and Refugee Clinic at Greater Boston Legal Services, where I am assistant director as well as a senior clinical instructor and lecturer on law. Alizeh was a student in the Clinic during the spring semester of 2023. I served as her direct supervisor.

The students at HIRC/GBLS work out of a legal services office, providing direct representation to clients in a variety of immigration matters, including applications for asylum and other forms of immigration relief before the U.S. Citizenship and Immigration Services, as well as the Immigration Court, the Board of Immigration Appeals, and federal Circuit Courts of Appeal. While students work under the direct supervision of an attorney, they often take primary responsibility for the preparation of the cases assigned to them. Their work involves intense factual and legal research, preparation of client and witness affidavits, preparation of supporting evidence, and preparation of legal memoranda and appellate briefs.

During her time at the Clinic, Alizeh took primary responsibility for preparing several asylum cases. Her clients came from different countries and different life experiences. Each presented unique factual and legal issues. In all of her work, Alizeh demonstrated outstanding legal skills as well as personal qualities that will make her an excellent law clerk and attorney. Her research and writing skills are excellent. She is able to define and research a legal issue in depth, examining it from all angles, and ultimately make compelling arguments to support her position. She is also open to the views of others, considering and addressing their views and willing to amend hers in response to persuasive arguments.

Alizeh and I met on an almost daily basis when she was at the Clinic, and I was able to evaluate her work in depth. She was meticulous in the way she approached each case, understanding the life-changing nature of the work for each client she represented. We met regularly to strategize as to how best to approach each case, plan next steps, and follow up as the work progressed. She was completely reliable in her approach to the work and committed to each case. She is extremely clear in managing her time, setting a plan for accomplishing the tasks in a particular case, and following through on that plan. She took initiative, determining what would be most useful in a particular case and taking steps to obtain what was needed in an efficient and timely manner. For example, on her own initiative, she located an expert witness capable of explaining a unique factual aspect of one of her client's cases, which became critical to meeting the legal elements necessary to the client's case.

When we met, she always came ready to use the time in the most productive way. She provided drafts of her work well in advance so I could review them prior to our meetings. While she showed extraordinary initiative, she also sought direction and feedback, asking targeted questions to prepare for her client meetings, and showed insight in addressing issues as they arose with each client. She followed up with each client, making sure that they felt respected and included in the development of their case, and that everyone's time was used effectively.

Alizeh was asked to take primary responsibility for some cases, but also to work in collaboration with other students in some cases. She was also extremely effective at working in collaboration, respecting the views of her fellow students, but at the same time taking appropriate responsibility for the group product and maintaining the same high standards she set for her individual work. She is a pleasure to work with.

I have no doubt that Alizeh possesses the skills and character that would make her a tremendous asset as a law clerk. I also feel that she would benefit greatly for the opportunity to engage in a clerkship, particularly at the Circuit Court level. She intends to pursue a career in the field of immigration law. This is an extremely complex area of law, which continues to develop largely through the decisions of the Circuit Courts. I believe that a clerkship would provide Alizeh with the opportunity to gain important insight into the workings of the Courts, and the interplay of the Courts and the administrative agencies responsible for enforcement of the immigration laws.

I highly recommend Alizeh for a clerkship, secure in the knowledge that she will bring her considerable legal skills and impeccable work habits to all she undertakes.

Sincerely,

Nancy Kelly - nkelly@gbls.org - 617-603-1808

Nancy Kelly
Assistant Director
Harvard Immigration and Refugee Clinic
Greater Boston Legal Services

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Alizeh Myra Sheikh

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WRITING SAMPLE

Drafted Summer 2022

I wrote the following memo as a summer intern at Innovation Law Lab. It is used with permission from my supervisor.

To: _____, Innovation Law Lab
From: Alizeh Sheikh, Summer Intern
Date: August 15, 2022
Re: Asylum one-year filing deadline — Exception for postal delay

Question Presented

In a scenario where an asylum applicant is considering moving residence from the Ninth to the Sixth Circuit, and where their asylum application was mailed four days early but received one day late due to postal service delays, is Sixth or Ninth Circuit case law more favorable to them?

Brief Answer

Ninth Circuit case law appears marginally more forgiving of postal service-related delays for asylum applications. First, one may petition for review of a filing deadline question in the Ninth but not the Sixth Circuit because the former considers issues of late filing to be “questions of law” within the court’s jurisdiction while the latter does not. Second, while the Board of Immigration Appeals (BIA) has interpreted Ninth Circuit case law to make it slightly more difficult to obtain an exception for late filing, at least in the case of notices of appeal, other favorable Ninth Circuit case law indicates that an attorney waiting until all evidence has been collected before mailing an asylum application acts ethically. Under Ninth Circuit case law, the application would likely be accepted assuming attorney diligence and in light of the asylum statute explicitly envisioning the possibility of unenumerated extraordinary circumstances exceptions to the filing deadline. The Sixth Circuit lacks this forgiving principle, and the only case where it found an exceptional circumstance due to postal service delays involved a notice of appeal with a thirty-day filing deadline that the Court would likely distinguish from the facts here, which involved an asylum application with a one-year deadline.

Relevant Facts

An asylum applicant in removal proceedings mailed their application four days prior to the one-year filing deadline, but the immigration court received it one day late due to postal service delays. The immigration court is within the Ninth Circuit, but the applicant has been considering moving to live with family in a state that is within the Sixth Circuit. If the applicant moves residences, they can file a motion to change venue so that the case may be adjudicated in an immigration court closer to their new address.¹

Discussion

I. Brief summary of appeals in the immigration court system

Defensive asylum applications, in which the applicant is in removal proceedings, are adjudicated in the first instance by immigration judges.² Either the applicant or the government may appeal to the Board of Immigration Appeals (BIA) an immigration judge's decision to issue a final order of removal.³ In addition, an immigration judge may certify their own decision in any removal proceedings to the BIA.⁴ BIA decisions constitute precedent for "all proceedings involving the same issue or issues" when they are so designated by a majority vote of the permanent members of the BIA.⁵ Applicants and the government may seek review of the BIA decision in the circuit court of appeals where the immigration court is located.⁶ On a petition for review, the court of appeals reviews the BIA's determinations of law de novo, though substantial

¹ 8 C.F.R. § 1003.20 (2022).

² 8 C.F.R. § 1208.2(b) (2022).

³ 8 C.F.R. § 1003.1(9) (2022).

⁴ 8 C.F.R. § 1240.1(a) (2022).

⁵ 8 C.F.R. § 103.10(b) (2022).

⁶ 8 U.S.C. § 1252(a)(5).

deference is given to BIA interpretations of the relevant law.⁷ Precedent decisions issued by a circuit court of appeals are binding on all cases within that circuit.⁸

II. Statutory and regulatory law concerning the one-year asylum application filing deadline

Asylum application filing deadlines are governed by 8 U.S.C. § 1158, which states that, notwithstanding the one-year time limit for filing, an application may be considered despite being late if the applicant demonstrates “either the existence of changed circumstances which materially affect the applicant’s eligibility for asylum or extraordinary circumstances relating to the delay in filing.”⁹ Federal regulations at 8 C.F.R. § 1208.4 specify what may generally constitute a changed or extraordinary circumstance. Changed circumstances concern situations that “materially affect the applicant’s eligibility for asylum,”¹⁰ while extraordinary circumstances refer “to events or factors directly related to the failure to meet the 1-year deadline,”¹¹ potentially including delays caused by mailing services.

There are four requirements for a late filing to be excused due to extraordinary circumstances. After first establishing that there were extraordinary circumstances, the applicant must then demonstrate that “the circumstances were not intentionally created by [the applicant] through his or her own action or inaction, that those circumstances were directly related to [their] failure to file the application within the one–year period, and that the delay was reasonable under the circumstances.”¹²

⁷ *Fisenko v. Lynch*, 826 F.3d 287, 290 (6th Cir. 2016); *Grigoryan v. Barr*, 959 F.3d 1233, 1239 (9th Cir. 2020).

⁸ *Matter of Ramos*, 23 I. & N. Dec. 336, 341 (B.I.A. 2002) (“We are unquestionably bound to follow rulings [of the federal circuit courts].”).

⁹ 8 U.S.C. § 1158(a)(2)(D).

¹⁰ 8 C.F.R. § 1208.4(a)(4) (2022).

¹¹ 8 C.F.R. § 1208.4(a)(5) (2022).

¹² *Id.*

The regulation provides several examples of what qualifies as an extraordinary circumstance, including serious illness, legal disability, and ineffective assistance of counsel.¹³ However, it explicitly states that there may be scenarios outside of the list that nonetheless qualify as “extraordinary circumstances.”¹⁴ Indeed, an old United States Citizenship and Immigration Services (USCIS) adjudicator guidebook specifies more “extraordinary circumstances” outside of what is provided within the regulation, such as “severe family or spousal opposition, extreme isolation within a refugee community, profound language barriers, or profound difficulties in cultural acclimatization.”¹⁵ The preamble to the regulation also states, “The fact that an applicant’s circumstances are described in the list of possible changed or extraordinary circumstances does not in itself mandate that a tardy filing be excused; nor does the lack of such a description mean that the circumstances cannot be raised during an interview or hearing and result in excuse of the untimely filing.”¹⁶

III. Circuit case law concerning the one-year asylum application filing deadline

Nationwide, there is minimal case law surrounding the question of what qualifies as an “extraordinary circumstance,” due to language at 8 U.S.C. § 1158(a)(3) stating that no court shall have jurisdiction to review any determination of the Attorney General regarding the one-year filing deadline.¹⁷ The 2005 Real ID Act amended the Immigration and Nationality Act (INA), including this section, with a provision clarifying that “[n]othing . . . in any . . . provision of this chapter (other than this section) which limits or eliminates judicial review shall be construed as

¹³ *Id.*

¹⁴ *Id.*

¹⁵ U.S. CITIZENSHIP & IMMIGR. SERVS., ASYLUM OFFICE BASIC TRAINING COURSE 20 (Mar. 23, 2009), <https://perma.cc/5NUS-R2BX>.

¹⁶ Asylum Procedures, 65 Fed. Reg. 76121, 76124 (Dec. 6, 2000).

¹⁷ See also 8 C.F.R. § 1208.4(a)(1) (2022) (stating that only an asylum officer, an immigration judge, or the Board of Immigration Appeals may make determinations regarding the one-year filing deadline).

precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals.”¹⁸ Many circuits, including the Sixth Circuit,¹⁹ interpret this language to indicate that they do not have jurisdiction over issues of timeliness and exceptions to the filing deadline, as they are deemed pure “questions of fact.”²⁰ However, the Ninth Circuit will review issues related to the one-year bar since it considers issues of tardiness to be “mixed” issues of fact and law that nominally qualify as questions of law.²¹ The Ninth Circuit reviews legal determinations by the agency *de novo*, and reviews questions involving factual findings, like whether a certain scenario constitutes “extraordinary circumstances” or whether a delay was “reasonable,” for substantial evidence.²²

Within the Ninth Circuit specifically, there is precedent for finding that a circumstance is “extraordinary” even if it does not fall into one of the examples explicitly provided in the regulation.²³ In addition, if extraordinary circumstances are found, whether the asylum application was filed in a reasonable time given that circumstance is determined holistically, or on the basis of all the facts of the case.²⁴ The Ninth Circuit has also compared 8 U.S.C. § 1158 and 8 C.F.R. § 1208.4 to other immigration laws, interpreting “extraordinary circumstances” to

¹⁸ 8 U.S.C. § 1252(a)(2)(D).

¹⁹ *Singh v. Lynch*, 655 F. App’x 464, 470 (6th Cir. 2016); *Lopez v. Holder*, 511 F. App’x 500, 504 (6th Cir. 2013).

²⁰ *Husye v. Mukasey*, 528 F.3d 1172, 1180 n.2 (9th Cir. 2008) (“We are aware of decisions from other circuits holding that discretionary decisions in general were not intended by Congress to be made reviewable under the REAL ID Act. *See, e.g., Chen v. U.S. Dep’t of Just.*, 434 F.3d 144, 151–55 (2d Cir. 2006); *Grass v. Gonzales*, 418 F.3d 876, 878–79 (8th Cir. 2005).”).

²¹ *Ramadan v. Gonzales*, 479 F.3d 646, 648 (9th Cir. 2007).

²² *Velasquez-Carrillo v. Barr*, 812 F. App’x 435, 438 (9th Cir. 2020) (concerning questions about what constitutes an extraordinary circumstance); *Lopez-Birrueta v. Holder*, 633 F.3d 1211, 1214 (9th Cir. 2011) (concerning reasonableness of delays).

²³ *Viridiana v. Holder*, 646 F.3d 1230, 1232 (9th Cir. 2011) (finding immigration consultant fraud to be an extraordinary circumstance).

²⁴ *Husye v. Holder*, 528 F.3d at 1182 (“[T]he term ‘reasonable period’ used in both the interim and permanent regulations suggests an amount of time that is to be determined on the basis of all the factual circumstances of the case.”); *see also Al Ramahi v. Holder*, 725 F.3d 1133, 1135 (9th Cir. 2013) (“We now hold that our jurisdiction over ‘questions of law’ as defined in the Real ID Act includes not only ‘pure’ issues of statutory interpretation, but also application of law to undisputed facts, sometimes referred to as mixed questions of law and fact.”).

indicate a fairly easy standard to reach since § 1208.4 specifically contemplates circumstances as minor as an error on an initial application and “requir[es] only” that the extraordinary circumstance not be “intentionally created.”²⁵ However, despite the hundreds of Ninth Circuit cases concerning the one-year asylum application filing deadline, it appears that none specifically concern the scenario of postal service delays resulting in an asylum application being filed late.

There is a similar dearth of such cases from the Board of Immigration Appeals. Since it additionally appears that the issue of mailing delays does not easily fall into any of the examples provided at 8 C.F.R. § 1208.4(a)(5), it becomes necessary to assess similar immigration court deadlines that do have case law concerning mailing delays. Treatment of similar deadlines may inform how a court would deal with a scenario concerning late filing of an asylum application.

IV. Law concerning the thirty-day Notice of Appeal filing deadline

Per statute, “any administrative appeal shall be filed within 30 days of a decision granting or denying asylum.”²⁶ The related regulation further states that a Notice of Appeal “shall be filed directly with the Board of Immigration Appeals within 30 calendar days” after the immigration judge renders a decision.²⁷ Unlike the one-year asylum filing deadline, neither the statute nor the regulation regarding notices of appeal delineate exceptions for late filings. The BIA interprets the statute and regulation as jurisdictional, such that the BIA lacks authority to adjudicate appeals when the notice of appeal was filed late.²⁸ However, the BIA can nonetheless certify cases to itself pursuant 8 C.F.R. 1003.1(c) where there are “exceptional circumstances.”²⁹ Reviewing

²⁵ *Viridiana*, 646 F.3d at 1237.

²⁶ 8 U.S.C. § 1158(d)(5)(A).

²⁷ 8 C.F.R. § 1003.38 (2022).

²⁸ *Matter of Liadov*, 23 I. & N. Dec. 990, 993 (B.I.A. 2006) (“Neither the statute nor the regulations grant us the authority to extend the time for filing appeals.”).

²⁹ *Id.*